March 29 Judge Dany
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 190.

SELAH CHAMBERLAIN, APPELLANT,

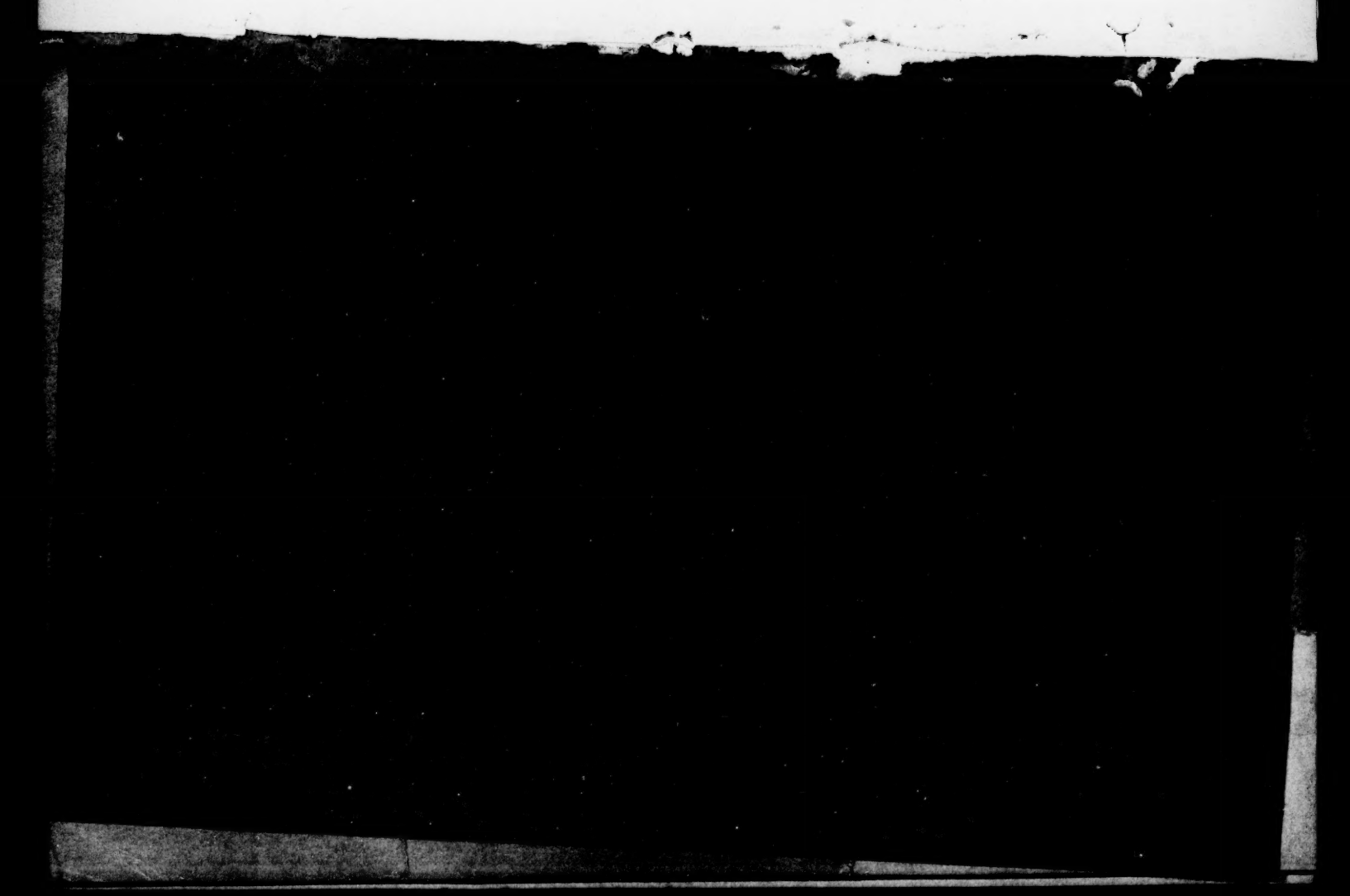
vs.

THE ST. PAUL AND SIOUX CITY RAILROAD COMPANY, THE SOUTHERN MINNESOTA RAILROAD COMPANY, A. P. MANN, S. B. RUGGLES, W. R. MARSHALL, C. SCHEFFER, T. A. SCOTT, H. D. HALL, G. I. SENEY, AND J. A. STEWART.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED JUNE 18, 1874.

Clerk



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1 UNITED STATES OF AMERICA,
District of Minnesota, ss:

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL AND SIOUX CITY RAILROAD Company and the Southern Minnesota Railroad Company.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that, on the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-two, came Selah Chamberlain, the plaintiff above named, by Messrs. F. R. E. Cornell and Gordon E. Cole, his solicitors, and filed in the clerk's office of said court his bill of complaint in the words and figures following, viz:

2 To the judges of the circuit court of the United States for the district of Minnesota:

Selah Chamberlain, of Cleaveland, in the State of Ohio, and a citizen of the State of Ohio, brings this bill on behalf of himself and of all others the holders of State railroad bonds issued by the State of Minnesota to the Southern Minnesota Railroad Company, against the St. Paul & Sioux City Railroad Company and the Southern Minnesota Railroad Company, both corporations, duly incorporated by and under the laws of the State of Minnesota, and established and doing business in and citizens of the State of Minnesota. And thereupon your orator complains and says, that heretofore, to wit, on the third day of March, 1857, the Congress of the United States, by an act approved on that day, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," did grant to the then Territory of Minnesota, for the pur-
3 poses of aiding in the construction of railroads from St. Paul and from St. Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi River to the southern boundary of the said Territory, in the direction of the mouth of the Big Sioux River; also, from La Crescent, via Target Lake, up the valley of Root River, to a point of junction east of range seventeen with a railroad from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude, every alternate section of land designated by odd numbers, for six sections in width, on each side of said roads. But in case it should appear that the United States had, where the lines or routes of said railroads were definitely fixed, sold any such sections or that the right of pre-emption had attached to the same, it should be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections as should be equal to such lands as the United States should have sold or to which rights of pre-emption should have attached, provided
4 that the lands so located should in no case be further than fifteen miles from said roads. And it was further provided in and by

said act, that the lands thereby granted to the said Territory or future State should be disposed of by the said Territory or future State in manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, might be sold; and when the governor of said Territory or future State should certify to the Secretary of the Interior that any twenty continuous miles of either of said roads were completed, then another quantity of land thereby granted, not to exceed one hundred and twenty sections for each of said roads, might be sold, and so on, from time to time, until said roads should be completed.

That, on the twenty-second day of May, of the same year, the legislature of *of* said Territory convened in extra session, by an act approved on that day, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of cer-
5 tain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,'" and granting certain lands to railroad companies therein named, duly authorized and empowered the Root River Valley and Southern Minnesota Railroad Company, a corporation duly incorporated by the legislature of said State by an act entitled "A bill for an act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, 1855, with power to construct, maintain, and operate a railroad from the village of Hokah, in the county of Houston, in said Territory, westwardly, by the most feasible and practicable route, to some point between the south bend of the Minnesota River and the southern line of said Territory; thence westwardly by the most direct and practicable route to the great bend of the Missouri River, as by said act of incorporation, when produced, will more fully appear, to survey, locate, construct, and complete, and perpetually to have, use, and maintain and operate the lines of railroad hereinbefore mentioned, as provided for in and by said act of Congress, and in aid of which the lands hereinbefore mentioned and set forth were
6 granted, and did, in and by the same act, dispose of and confer to and upon the Root River Valley and Southern Minnesota Railroad Company all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of said act of Congress applicable to the said two lines of railroad hereinbefore set forth, to wit, a railroad from La Crescent, via Target Lake, up the Valley of Root River to a point of junction east of range 17, with a road from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude, and a railroad from St. Paul and St. Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi River to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, subject to the provisions of said act of Congress, as by said act, when produced, will appear.

That, thereafterwards, and on the 23d day of May, A. D. 1857, the legislature of said Territory, by an act approved on that day, duly changed the name of said corporation, and provided that its corporate name
7 should thereafter be the Southern Minnesota Railroad Company, as by said act, when produced, will appear. That, thereafterwards, by an amendment to the constitution of the State of Minnesota, the successor of said Territory, adopted April 15, 1858, provision was made for a loan of the credit of the said State to the said corporation for the pur-

poses of expediting the construction of said lines of railroad mentioned in said act of Congress, which it was authorized to construct and maintain as aforesaid to an amount not exceeding twelve hundred and fifty thousand dollars, and to that end provision was therein made for the issue to said company of the special bonds of the State, bearing interest at seven per cent. per annum, payable semi-annually, in the city of New York; said bonds to be denominated "Minnesota State Railroad bonds;" said bonds to be signed by the governor of said State, and countersigned and registered by the treasurer thereof, sealed with the seal of the State, of denominations not exceeding one thousand dollars each, payable to the order of said company, and transferable by the endorsement of its president, and redeemable at any time after ten and before twenty-five years from the date thereof; and it was therein further provided that
8 whenever said company should produce to the governor of said State satisfactory evidence, as therein provided, that any ten miles of either of said roads have been actually constructed and completed, ready for placing the superstructure thereon, said governor should cause to be issued and delivered to said company bonds, as aforesaid, to the amount of one hundred thousand dollars; and whenever thereafter, and as often as said company should produce to said governor like evidence of a further construction of ten miles of either of said roads, then the said governor should cause to be issued to said company like bonds to the amount of one hundred thousand dollars for each and every ten miles of road thus constructed; and whenever said company should furnish like evidence that any ten miles of its road was actually completed and cars running thereon, the said governor should cause to be issued to it a like number of said bonds; and whenever thereafter, and as often as said company should produce to said governor like evidence that any further ten miles of said roads were in operation as aforesaid, said governor should cause to be issued like bonds to said company to the amount of one hundred thousand dollars, until the full amount of
9 said bonds thereby authorized should be issued; provided that two-fifths, and no more, of all bonds issued to said company should be expended in the construction and equipment of the said line of road from La Crescent to the point of junction with the transit road, as provided by law, the said transit road being the railroad designated in said act of Congress as a road from Winona, via St. Peter, to a point on the Big Sioux River south of the 45th parallel of north latitude.

And it was further provided in and by said amendment that said company should make provision for the punctual payment and redemption of all bonds issued and delivered to it as aforesaid, and for the punctual payment of the interest which should accrue thereon in such manner as to exonerate the treasury of said State from any advance of money for that purpose, and to that end, and as security therefor, it was therein provided that said governor should demand and receive from said company, before any of said bonds should be issued, an instrument pledging the net profits of said roads for the payment of said interest, and a conveyance to the State of Minnesota by said company of the first two hundred and forty sections of land, free from prior
10 incumbrances, which said company was or might be authorized to sell, being one hundred and twenty sections of land granted in and by said act of Congress in aid of each of said roads which said company was authorized to construct and maintain as aforesaid, and which in and by said act it was authorized to sell before any portion of said roads or either of them should be constructed, in trust, for the better security of the treasury of the State from loss on said bonds, which said

deed of trust should authorize the governor and secretary of state of said State to make conveyance of title to all or any of such lands to purchasers agreeing with said company therefor, the proceeds of all such sales to be applied to the payment of interest accruing upon said bonds in case of default in the payment of the same, and as a sinking-fund to meet any future default in the payment of the interest and principal thereof when due. And as a further security for the payment of said bonds, so to be issued to it as aforesaid, said company was in and by said amendment required to transfer to the treasurer of the State of Minnesota, at the time of the issue to it of the bonds of said State as aforesaid, an amount of first-mortgage bonds of said company upon
11 its road, lands, and franchises corresponding to the said State bonds issued to it, and in case said company should make default in the payment of either the interest or the principal of the State bonds so issued to it, it was therein provided that no more State bonds should thereafter be issued to said company, and the governor of said State should proceed in such manner as might be prescribed by law to sell the bonds of said company or the land so held in trust as aforesaid, or might require a foreclosure of the mortgage executed to secure the same.

That, thereafterwards, and on the 12th day of August, A. D. 1858, the legislature of said State, by an act approved on that day, entitled "An act concerning land-grant railroads," duly made provisions for the sale of the lands so to be conveyed to the State by said deed of trust, and for the foreclosure of the mortgages to be executed to secure the first-mortgage bonds to be issued, and delivered to the treasurer of said State, as provided in said amendment in case of default in the payment of the first-mortgage bonds so to be issued as aforesaid, and it was therein provided, that such foreclosure should be by public sale of all the
12 properties, rights, privileges, and franchises pledged in such deed of trust or mortgage for the payment of the interest or final redemption of the principal of said company's bonds, due notice having first been given of such intended sale by advertisement, in such manner and for such length of time as might be prescribed in the deed of trust or mortgage to be executed by said company, and in case of any sale upon any such foreclosure, the party or parties acquiring title thereunder, and their associates, successors, or assigns, should have and acquire thereby, and should exercise and enjoy thereafter, all and the same rights, privileges, grants, franchises, immunities, and advantages, in and by said mortgage or trust-deed enumerated and conveyed, which belonged to and was enjoyed by the company executing such deed or mortgage or contracting such debts, so far as the same should relate to and appertain to that portion of said road or the line thereof mentioned and described in and conveyed by said mortage or trust-deed, and no further, as fully and absolutely, in all respects, as the corporators, shareholders, officers, and agents of such company might or could have done theretofore, had not such sale or foreclosure taken place. And it was further
13 provided that such purchaser or purchasers, their associates, successors, or assigns, might proceed to organize anew, and elect directors, distribute and dispose of stock, take the same or another name, and might conduct their business generally under and in the manner provided by the charter of said company, with such change or variations in manner and form of organization as their altered circumstances and better convenience might seem to require; provided, however, that no greater or enlarged powers should be exercised by the new organization than are conferred by the charter of said company. That, thereafterwards, and prior to the issue of any of said State bonds authorized by

said amendment, the said Southern Minnesota Railroad Company duly executed an instrument, pledging the net profits of its said roads for the payment of the interest of the State bonds, so to be issued to it as aforesaid, and delivered same to the governor of said State; and did, to wit, on the 15th day of October, 1858, duly execute and deliver to the said governor a conveyance to the State of Minnesota of the first two hundred and forty sections of land, which in and by said act of
14 Congress it was authorized to sell, in trust, for the payment of said bonds, which conveyance is int he words and figures following, to wit:

"This indenture, made and concluded at St. Paul, in the State of Minnesota, the first day of October, one thousand eight hundred and fifty-eight, by and between the Southern Minnesota Railroad Company, party of the first part, and the State of Minnesota, party of the second part, witnesseth: That whereas, by an amendment of the constitution of the State of Minnesota, adopted by the people thereof on the 15th day of April, A. D. 1858, a loan of State credit was provided to be made by the said State of Minnesota to certain railroad companies in manner following, to wit: That section ten of article nine of the constitution shall be as follows:

"'SECTION TEN. The credit of the State shall never be given or loaned in aid of any individual, association, or corporation, except that, for the purpose of expediting the construction of the lines of railroad in aid of which the Congress of the United States has granted lands to the Territory of Minnesota, the governor shall cause to be issued and delivered to each of the companies in which said grants are vested by the legisla-
tive assembly of Minnesota the special bonds of the State, bear-
15 ing an interest of seven per cent. per annum, payable semi-annually, in the city of New York, as a loan of public credit, to an amount not exceeding twelve hundred and fifty thousand dollars, or an aggregate amount to all of said companies not exceeding five millions of dollars;'

"And whereas it is further provided in the some section of the same article, so adopted by the people of the State of Minnesota as aforesaid, that the governor of said State shall only cause the bonds to be issued after the compliance of the said railroad companies with certain conditions precedent, among which are enumerated the following, to wit:

"'The governor shall demand and receive from each of said companies, before any of said bonds are issued, an instrument pledging the net profits of the road for the payment of said interest, and a conveyance to the State of the first two hundred and forty sections of land, free from prior incumbrance, which such company is or may be authorized to sell, in trust, for the better security of the treasury of the State from loss on said bonds, which said deed of trust shall authorize the governor and the secretary of the State to make conveyances of title to all or any
of such lands to purchasers agreeing with the respective railroad
16 companies therefor; provided, that before releasing the interest of the State to such lands such sales shall be approved by the governor, but the proceeds of such sales shall be applied to the payment of interest accruing upon the bonds in case of default in the payment of the same, and as a sinking-fund to meet any future default in the payment of interest, and the principal thereof when due;'

"Now, therefore, the said party of the first part, for and in consideration of the premises and of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed,

and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part in trust for the uses and purposes hereinafter specified, the first two hundred and forty sections of the land granted to the aforesaid Territory of Minnesota by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,' approved March the third, one thousand eight
17 hundred and fifty-seven, and by the act of the legislative assembly of the Territory of Minnesota entitled, 'An act to execute the trust created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State;" and granting certain lands to railroad companies therein named,' approved May the twenty-second, one thousand eight hundred and fifty-seven, granted to and vested in the said party of the first part; to have and to hold the said two hundred and forty sections of land for the sole use, benefit, and behoof of the said party of the second part, forever in trust for the following uses and purposes, to wit:

"First. In case of default in the payment of the interest or the principal when due of the State bonds to be issued to the said party of the first part, in accordance with the provisions of section ten, article nine, of the constitution of the State of Minnesota as hereinbefore set forth, then and in such case the party of the second part shall
18 proceed to sell, and the said party of the second part is hereby authorized and empowered, by their authorized agent or agents, to sell and convey by good and sufficient deed any or all portions of the two hundred and forty sections of land hereby conveyed; first giving notice of the time and place of such sale by advertizing the same in two or more newspapers published in the city of New York and in the State of Minnesota sixty days previous to the day of such sale, the proceeds of such sale or sales to be applied to the payment of the accruing interest or prnicipal due on the said State bonds so to be issued as aforesaid:

"Provided, that if said party of the first part to these presents shall, before the day of sale, pay all interest and principal then due, and all expenses incurred by the State of Minnesota, the party of the second part, no sale shall take place, and the rights of said party of the first part shall not be impaired by reason of such default. In case of the sale of any or all of the two hundred and forty sections of land, as hereinbefore provided, by the said party of the second part, then, in such case, the trust hereby created shall cease and determine
19 and be null and void, and all the interest, claim, title, and ownership of the said party of the first part to any and all of the two hundred and forty sections of land, and every part and portion thereof, shall be, and is hereby, transferred, conveyed, bargained, and sold to the said party of the second part, and to their assigns, to be by them held in fee-simple for their use, benefit, and behoof forever, free from any and all interest, claim, demand, or ownership thereafter of the said party of the first part in law or in equity; and the said party of the first part doth hereby covenant and agree—

"First. That the said two hundred and forty sections of land, hereby conveyed, shall be of average quality and value with those of the entire

lands secured to and vested in the said party of the first part by an act of the legislative assembly of Minnesota, approved May the twenty-second, one thousand eight hundred and fifty-seven, hereinbefore referred to.

"Second. That the said party of the first part, so soon as the two hundred and forty sections of land which said party of the first part now is or may be authorized to sell, or any part thereof, shall be set apart and designated by legal subdivisions by the Secretary
20 of the Interior, or other legal authority of the United States, shall, upon the demand of the governor of the said State of Minnesota, sign, seal, and deliver to the said governor, in trust, a good and sufficient conveyance of the said two hundred and forty sections of land, or any part thereof, which said deed of trust shall authorize the governor and secretary of state to make conveyance of title to all or any of such lands to purchasers agreeing with the respective railroad companies therefor: Provided, that before releasing the interest of the State to such lands such sale shall be approved by the governor, but the proceeds of all such sales shall be applied to the payment of interest accruing upon the bonds in case of default of the payment of the same, and as a sinking-fund to meet any future default in the payment of interest and the principal thereof when due.

"Third. The said party of the first part hereby expressly reserves the right to contract with any person or persons, company, or corporation for the sale of all, or of any part of the said two hundred and forty sections of land upon such terms and conditions as said party of the first part may deem proper, subject to the approval of the
21 governor of said State of Minnesota, the party of the second part, and the proceeds of such lands shall be applied to the payment of interest accruing upon the said State bonds in case of default of the payment of the same, and as a sinking-fund to meet any future default in the payment of interest and the principal thereof when due.

"Fourth. That, in case of the prompt payment by said party of the first part of the principal and interest of the State bonds to be issued by the said party of the second part to said party of the first part, and so soon as the same shall be fully paid and cancelled, then, in that case, this instrument shall be and become wholly null and void, and the same terminate, be annulled and canceiled without any act or deed to be done or performed by the party of the first part or the party of the second part, and the said two hundred and forty sections of land, or such portion thereof remaining unsold, and all right, title, claim, interest, and demand thereto in law and in equity, shall revert to and be re-invested in said party of the first part, as fully and as perfectly as if this instrument had never been executed: Provided, however, and it is hereby expressly stipulated by these presents, that nothing herein con-
22 tained shall be construed to interfere with, annul, or invalidate any sale or sales of any portion of the said two hundred and forty sections of land made, or which may have been made, in accordance with the terms of this indenture prior to the said payment of principal and interest of the State bonds, as aforesaid.

"In witness whereof the party of the first part hath hereunto and to one other original indenture of the same tenor in all respects as this, affixed the corporate seal of said party of the first part and have caused

the same to be signed by its president and attested by its secretary, the day and year first above written.

[CORPORATE SEAL.] "DANIEL WELLS, JR., *President.*
"A. H. BROTT, *Secy.*

"Sealed & delivered in presence of—
"M. L. VIBBER.
"R. E. KITTREDGE.

"STATE OF MINNESOTA,
"*County of Ramsey, ss:*

"On the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty eight, before me appeared Daniel Wells,
23 junior, and Albert H. Brott, to me known, and being duly sworn before me, said that the said Daniel Wells, jr., was the president, and the said Albert H. Brott was the secretary of the corporation known as the Southern Minnesota Railroad Company; that they know the corporate seal of said corporation; that the seal affixed to the foregoing instrument in writing is the corporate seal of the said corporation, and was so affixed by authority of the said corporation and that the said president signed and that the said secretary attested the said instrument in each others presence and by the authority of the said corporation; all which is hereby certified.

"Witness my hand and notarial seal hereunto affixed.

[NOTARIAL SEAL.] "WILLIAM F. WHEELER,
"*Notary Public, Minnesota.*"

And did under date of the first day of October, 1858, but which instrument was acknowledged and delivered on the 16th day of May, 1869, duly execute its trust-deed to Benjamin Pringle, of Batavia, in the State of New York, and Andrew G. Chatfield, of Belle Plaine, in
24 the State of Minnesota, to secure the payment and satisfaction of the first-mortgage bonds therein provided for and described and the interest thereon, and any part thereof, whereby it granted and conveyed to the said Pringle and Chatfield, parties of the second part thereto, as joint tenants and not as tenants in common, and to them and their survivor, successor or successors, in trust as thereinafter expressed, the entire railroads of the said Southern Minnesota Railroad Company, party of the first part, from La Crescent via Target Lake, up the valley of the Root River to a point of junction with a railroad from Winona via St. Peter to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude, east of range seventeen, in the State of Minnesota; and also the railroad from St. Paul and St. Anthony via Minneapolis to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Sueur, Traverse de Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the State of Minnesota, in the direction of the mouth of the Big Sioux River, (being the same railroads mentioned in said act of Congress as aforesaid.) Also all the roads, lands, and franchises of the said
25 company, and all the railways, rails, bridges, fences, ties, spikes, culverts, rights of way, station-houses, and other buildings and structures, and such lands as are selected and actually in use for depot or station grounds now held or owned or which might be thereafter held or owned by said company, for the purpose of constructing, operating, or maintaining its said railroad or the accommodation of the business thereof; also all the net profits, income, titles, rents, issues, and

profits, and alienable franchises of the said corporation connected with its railroads or appertaining thereto; also all the locomotives or stationary engines, tenders, and cars, of every kind, machinery, machine-shops, tools, implements, and materials, connected with, or intended for the construction, equipment, operating, and conducting of said railroads, hereby conveyed or intended to be conveyed, then owned or thereafter to be acquired by said company, all of which were therein declared to be appurtenances and fixtures of said railroads and to be used therewith and not separated therefrom, but to be taken as part thereof, together with all the rights, title, interest, and claim whatever, legal or equitable,
26 which said company then had or might thereafter acquire in and to that portion of the lands of the United States granted or intended to be granted by said act of Congress, and amounting in all to the estimated quantity of seven hundred thousand acres.

To have and to hold to the said parties of the second part, in trust, for the following purposes, to wit: That in case default should be made in the payment of the interest secured by the bonds therein provided for, being first-mortgage bonds to be issued by said company, in the aggregate not to exceed the sum of two millions of dollars, and interest-warrants or coupons thereto attached, at the place where and the times when the said coupons or interest-warrants should respectively become due; or in case the said company should fail to set aside and invest one per cent. per annum upon said bonds as a sinking-fund, as therein provided; or in case the principal of said bonds, or any of them, should not be paid at maturity, or immediately on demand thereafter; then, and in such case, it should be lawful for such trustees or their survivor, successor or successors, or upon the request in writing of the governor of the State of Minnesota, or of any of the holders of said bonds,
27 to said trustees, to enter in and upon, and take possession of, all and singular the premises, property, rights, and franchises thereby granted or intended so to be, or which might be thereafter granted by way of further assurance, and by themselves or their agents take and receive the income of the mortgaged railroad and premises for the purposes of the security thereinbefore declared, first defraying out of the same the expenses of operating said railroads and the needful repairs of the same, and all the appurtenances, and to sell and dispose of the same, and all the appurtenances thereto belonging, and all the property of the party of the first part thereby conveyed or to be conveyed by such further assurance, and all benefit and equity of redemption of the said company therein, or any part or parcel thereof, at public auction, after notice published for six weeks in one or more newspapers published in the cities of New York and St. Paul, and as the attorneys of the parties of the first part, for that purpose by said instrument duly constituted, to make and deliver to the purchaser or purchasers good and sufficient deeds of conveyance in fee-simple absolute for the same, and out of the moneys arising from such sale first to retain and apply so much thereof as will discharge the principal
28 and interest of all of said bonds, and the costs, commissions, and charges incidental to said sale, rendering the surplus of the purchase-money, if any, to the party of the first part or its assigns; and such sale should be a perpetual bar against the party of the first part, and all persons or parties claiming by, from, or under it. And it was therein further stipulated and agreed that, in case said trustees, parties of the second part therein, their survivors, successor or successors, should neglect or refuse to proceed to the foreclosure of said mortgage or trust-deed in the manner thereinbefore provided, it should and might

be lawful for the governor of the State of Minnesota, as the attorney, and in the name, of the said party of the second part, their survivors, successor or successors, forthwith, in case of such refusal or neglect, to proceed to foreclose the same, and to make and execute and deliver all deeds or other instruments in writing, and do and perform all acts and things necessary and proper to be done and performed in and about said foreclosure, or in regard to the sale and conveyance of the property, rights, and franchises under such foreclosure, in as full and ample a manner as the party of the second part, as trustees aforesaid, might or could do, as by said indenture on file in the office of the secretary of state of the State of Minnesota, to which reference is made when produced, will appear.

And your orator further shows that said Southern Minnesota Railroad Company thereupon entered upon the construction of its said railroads, and contracted with and employed your orator to grade and prepare the road-beds of said roads for the superstructure, and that your orator thereupon proceeded to grade and prepare said road-beds, and laid out and expended large sums of money in and about the premises, and graded and caused to be graded and prepared for the superstructure, and actually constructed and completed, ready for placing the superstructure thereon, a large amount of said roads, to wit, thirty-seven and one-half miles of the road from St. Paul and St. Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi River to the southern boundary of the said Territory, (now State,) in the direction of the mouth of the Big Sioux River, and twenty miles of the railroad from La Crescent via Target Lake, up the valley of the Root River, to a point of junction east of range seventeen, with the road from Winona via St. Peter, to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude, and as often as ten miles of either of said roads were actually constructed and completed ready for placing the superstructure thereon, the Southern Minnesota Railroad Company produced to the governor of said State satisfactory evidence thereof as required by the said amendment, and transferred to the treasurer of said State an amount of its first-mortgage bonds secured by said mortgage hereinbefore set out and referred to, corresponding to the State bonds issued to it, and thereupon the governor of said State caused to be issued to the said company the bonds of said State, corresponding in all respects to the requirements of said amendment to the amount of one hundred thousand dollars for every ten miles so constructed and completed as aforesaid, all of which bonds were issued to said company during the years 1858 and 1859, which bonds, except the dates and numbers, were in the following form:

"1,000.] Seven per cent. [1,000.

"UNITED STATES OF AMERICA,
"*State of Minnesota:*

"No. .] *Seven per cent. Minnesota State railroad bond.* [No.

"The State of Minnesota acknowledges to owe and promises to pay to the order of the Southern Minnesota Railroad Company, at the Metropolitan Bank in the city of New York, or at such other place in said city as may be hereafter designated, the sum of one thousand dollars, on the first day of December, A. D. one thousand eight hundred and eighty-three, with interest at the rate of seven per cent. per annum, to be paid

semi-annually at the place or places aforesaid, on the first day of June and December of each year, on the presentation and surrender of the proper coupon hereto attached. This bond is issued under authority of an amendment of the constitution of the State of Minnesota, adopted by the people on the 15th day of April, 1858, and proclaimed by the governor of the State on the 15th day of May, 1858.

"Witness the great seal of the State of Minnesota, and the signature of the governor and treasurer of said State, at St. Paul, Minnesota, this day of , 18 , and of the State the .

(Signed) "HENRY H. SIBLEY, *Governor.*

Countersigned and registered:

"GEO. W. ARMSTRONG, *Treasurer.*"

32 To which were attached the proper coupons, referred to in said bond, representing the semi-annual installments of interest and payable as in said bond set forth. That said company so received of the said governor a large amount in said bonds, in the aggregate, to wit, about the amount of five hundred and seventy-five bonds of one thousand dollars each, and deposited with the treasurer of said State an equal amount of its first-mortgage bonds, secured by said mortgage as security for the payment by it of the interest and principal of said State bonds. That of said bonds so issued to the said Southern Minnesota Railroad Company by the said governor the principal part thereof, to wit, five hundred bonds of one thousand dollars each, amounting in the aggregate to the principal sum of five hundred thousand dollars, were indorsed and transferred to your orator by said company in payment for said grading, and the remainder of said bonds, being indorsed payable to the bearer by the president of said company, passed into the market and into the hands of numerous parties, in small sums, whose names are unknown and cannot be ascertained by your orator.

33 That each of the bonds so issued and delivered by the governor of said State to said company, when transferred by said company, had upon it the following indorsement or writing appended to the bottom thereof:

"Pay the above bond and all accruing interest as maturing unto bearer. The Southern Minnesota Railroad Company hereby waives the presentment, demand, and notice of this bond and the interest-coupons thereto attched.

(Signed) "DANIEL WELLS, JR.,

"*President of the Southern Minnesota Railroad Co.*"

All of which will more fully appear by said bonds, coupons, and indorsement, when the same shall be here in court produced. That after grading said fifty-seven and one-half miles of road said Southern Minnesota Railroad Company made default in the payment of the interest on said State bonds so issued to it as aforesaid, and in the payment of the interest on the first-mortgage bonds delivered by it to the treasurer of the State of Minnesota and held by said State as security for the payment of said bonds issued by the State, and abandoned work on the said railroad, and no work was afterwards done on said railroad by said company and no more State bonds were thereafter issued to said company.

34 That no part of the principal of any of said State bonds and no part of the interest accruing thereon from and after the first

day of December, 1859, and none of the coupons falling due after that day have ever been paid; and there is now due to your orator and payable and unpaid at the date of the filing of this bill for interest on said bonds the sum of four hundred and thirty-two thousand seven hundred and fifty dollars. That the Southern Minnesota Railroad Company having made default in the payment of the interest-coupons accruing due upon said State bonds issued to it as aforesaid on the first day of June, 1860, and also in the payment of the interest accruing due upon its own first-mortgage bonds secured by said mortgage, and the governor of said State having in writing required a foreclosure of said mortgage by the trustees therein named, and said trustees having refused and neglected to proceed to the foreclosure of said mortgage or trust-deed, the governor of said State did, in the fall of 1860, and on the 16th day of October, A. D. 1860, duly cause said trust-deed to be foreclosed, in conformity with all the provisions of said trust-deed and of the amendment to the constitution and the statutes in such case made and
35 provided; and, pursuant to said provisions and in the exercise of the discretion vested in him by an act of the legislature of said State, entitled "An act in addition to an act entitled 'An act concerning land-grant railroads,'" passed August twenty-fifth, eighteen hundred and fifty-eight, caused the same to be foreclosed, and the lands, properties, rights, privileges, and franchises granted and conveyed in and by said trust-deed to be exposed for sale at public auction, after due notice by advertisement, pursuant to the provisions of said trust-deed, and did at said sale duly bid off and purchase the same for and in the name of the State of Minnesota, she being the highest and best bidder therefor, and did cause the necessary conveyances to effectuate said sale to be executed and filed in the office of the secretary of state of said State, as by the said instrument and foreclosure proceedings, when produced, will appear.

And your orator further shows that on the fourth day of March, 1864, the State of Minnesota being still seized and possessed, and in the actual possession and control of all the lands granted in aid of the construction of said lines of road by said act of Congress, which said company was authorized to sell at the date of said conveyance heretofore set
36 out and referred to, and of an amount of the first-mortgage bonds of said company equal to the amount of State bonds issued to said company, and which largely exceeded the amount for which said property was sold on said foreclosure, and upon which all the principal and a considerable portion of the interest accruing thereon remained unsatisfied, and of the rights, properties, and franchises of said company conveyed in and by said mortgage and purchased on said foreclosure sale, and of all property and rights acquired by virtue of any forfeiture, act, or thing done or suffered by said company, solely in trust, and as a fund for the payment of the State bonds so issued to said company, as aforesaid, and for the payment of the same to the several holders, and for no other purpose or purposes whatever, the said State having paid no part, either principal or interest, of said State bonds, but the same remaining wholly outstanding and unpaid save as aforesaid, and your orator being then and ever since the lawful owner and holder of said five hundred State railroad bonds, so transferred to him as aforesaid, and the coupons belonging thereto, and having an equity to have said fund faithfully applied by said State to the payment
37 thereof, did, by an act passed by the legislature of said State and approved on that day, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue

certain acts in relation thereto," in disregard and violation of said trust, and of the rights and equities of your orator and of the other holders of the bonds of said State issued to said company, grant, transfer, dispose of, and confer upon a certain corporation thereby created, and styled the Southern Minnesota Railroad Company, being the same corporation which is made defendant by that name in this your orator's bill of complaint, without any consideration whatever paid or to be paid by said company therefor, all the rights, properties, privileges, franchises, and land acquired by the State of Minnesota, by virtue of any act, acts, deeds, sale, foreclosure, agreement, or things done or suffered, or by reason of any forfeiture, or any law of the State pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the road described in said act of Congress as a road from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude, east of range seventeen, and also
38 pertaining to the line of road and branches described in the act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, 1857, and in the several acts amendatory thereof, subject to certain conditions which were performed by said company, and said grant accepted; and it was further provided by said act that whenever the corporators named in said act, or the said corporation should fully complete ten miles of said railroad, the governor of the State of Minnesota should cancel all the bonds issued by the original Southern Minnesota Railroad Company to the State of Minnesota; that then, afterwards, the said company having completed said ten miles of their said road, the governor of the said State did cancel the said bonds and deliver the same up to said company; and the said State did, by its legislature, in and by said act, grant and transfer to certain parties therein named, who were thereby created a corporation under the name of the Minnesota Valley Railroad Company, without any consideration whatever paid or to be paid therefor, all the rights, immunities, benefits, privileges, franchises,
39 lands, interest, and property acquired by said State by virtue of any act, acts, deeds, sale, foreclosure, agreement, or thing by said company done or suffered, or by reason of any forfeiture or any law of the State pertaining to the line of road from St. Paul and St. Anthony, via Minneapolis, to a point of junction at Shakopee City, in the county of Scott; and thence, via Belle Plaine, Clarksville, Le Sueur, Traverse de Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by said act of Congress, pertaining to said line of roads, subject to certain conditions, which were complied with by said company, and said grant accepted, and containing the same provisions in regard to canceling the bonds of the Southern Minnesota Railroad Company as are contained in the grant to the defendant, the Southern Minnesota Railroad Company; that thereupon the name of said Minnesota Valley Railroad Company was, by resolution of its board of directors, ratified and authorized by an act of the legislature of said State entitled "An act relating to the St. Paul and Sioux City Railroad Company," ap-
40 proved March 1, 1870, changed to the St. Paul & Sioux City Railroad Company, and is the same corporation which is made defendant by that name in this your orator's bill of complaint.

And your orator further shows that, on the ninth day of October, A. D. 1866, the one hundred and twenty sections of land which said origi-

nal Southern Minnesota Railroad Company was authorized to sell in advance of construction, pertaining to that portion of the road described in said act of Congress, and held by the defendant the St. Paul and Sioux City Railroad Company, having been definitely fixed, selected, set apart, and certified to the State by the United States, and being vested in and being held by the State of Minnesota in trust and as a fund for the payment of the State bonds owned by your orator and the other holders of State bonds issued to the Southern Minnesota Railroad Company, and for no other purpose or purposes whatever, was, by the governor of said State, in disregard and violation of said trust, but in pursuance of the pretended authority vested in him by section two of chapter two of said act of the legislature of said State, approved March 4th, 1864, conveyed by deed to the said Minnesota Valley
41 Railroad Company, now St. Paul & Sioux City Railroad Company, defendant herein, without any consideration whatever paid or to be paid therefor by said company; that the land so conveyed amounted in the aggregate to seventy-four thousand eight hundred and eighty-two acres and $\frac{46}{100}$ of one acre, full and accurate descriptions whereof are contained in the paper hereto attached, and marked "Schedule A," and made a part of this your orator's bill of complaint, as by the said deed and the said act of the legislature, when produced, will appear; that at the date of said act of March 4, 1864, vesting or purporting to vest said property, rights, and franchises in the defendant, the Minnesota Valley, now St. Paul & Sioux City, Railroad Company, and at the date of the execution and delivery to said company of the deed of said lands as aforesaid, the said defendant had full notice and knowledge of the trust on which the said State of Minnesota held said lands, properties, and franchises, and of the fact that said State bonds were outstanding and unpaid, and of the rights and equities of your orator and the other holders of said State bonds so issued to the said Southern Minnesota Railroad Company
42 in the premises; that at the date of said act of March 4, 1864, and of said deed of the ninth of October, 1865, said lands were of great value, to wit, of the average value of seven dollars per acre, and of the aggregate value of five hundred and twenty-four thousand one hundred and seventy-four dollars, and are now of a value greatly exceeding that sum; that the franchises, rights, immunities, and privileges so held by said State and conveyed to and conferred upon the defendant the St. Paul and Sioux City Railroad Company, together with the graded road-bed transferred to said defendant, were, at the date of the act of March 4, 1864, of great value, to wit, of the value of two million' of dollars, and are now worth vastly more than that sum.

And your orator further shows that the first one hundred and twenty sections of land which said original company were authorized to sell, in advance of construction, appertaining to that portion of railroad conveyed to and vested in the defendant, the Southern Minnesota Railroad Company, having been definitely fixed, set apart, and certified to the State of Minnesota, by the United States, and being held
43 by the said State in trust as aforesaid, and the said company having complied with the conditions of said act of March 4, 1864, in that regard, the governor of said State, pursuant to the pretended authority vested in him by said act, and in disregard and violation of said trust, did, by several deeds bearing dates, respectively, January 6, 1866, December 5, 1866, and April 16, 1867, without any consideration whatever, paid or to be paid therefor, convey to the defendant the Southern Minnesota Railroad Company all of the lands to which said original company was so entitled under said grant, amounting in the

aggregate to fifty-two thousand nine hundred and sixty-seven and $\frac{82}{100}$ acres, a full and accurate description of all which lands are contained in the paper annexed, marked "Schedule B," and made a part of this your orator's bill of complaint, as by the said deeds, when produced, will appear.

That at the dates of said act of March 4, 1864, and of said several conveyances, said lands were of great value, to wit, of the average value of seven dollars per acre, and of the aggregate value of three hundred and seventy-thousand seven hundred and eighty-nine
44 dollars, and are now worth vastly more than that sum; and at the date of said act of March 4, 1864, said rights, franchises, and privileges, and graded road-bed, so granted and conferred to and upon the defendant the Southern Minnesota Railroad Company, were of great value, to wit, of the value of five hundred thousand dollars, and are now worth vastly more than that sum.

That at and prior to the date of said act of March 4, 1864, and of the respective deeds of said lands last set out as aforesaid to the defendant, the Southern Minnesota Railroad Company had full knowledge and notice of the trust on which said State of Minnesota held said lands, properties, and franchises, and of the fact of the issue of said State bonds to the original Southern Minnesota Railroad Company, and that the same were outstanding and unpaid, and of the rights and equities of your orator and the other holders of said State bonds in the premises; that, taking said lands, properties, and franchises charged with said trust, and with notice and without consideration as aforesaid, the defendants have entered into the possession and control of said lands, prop-
45 erties, and franchises, and graded road-beds, and deny and ignore your orator's rights and equities in and to said property, and have built and are operating portions of the said lines of road for their own benefit; that they have sold and disposed of a considerable quantity of said lands in small quantities, for purposes of tillage and occupancy, to numerous persons, receiving in payment therefor, in most cases, small sums of money and mortgages and notes to secure the balance of the purchase-money, or leaving the balance to run on contracts for sale at rates of interest therein specified, and have converted and applied the proceeds of said lands to their own use; that your orator is ignorant of and cannot state the exact quantity sold by said company, but that it is not less than twenty-five thousand acres, sold by the defendant the St. Paul & Sioux City Railroad Company, and seventeen thousand acres sold by the defendant the Southern Minnesota Railroad Company, and realized large sums therefor; but the precise amount so sold, and the precise amount of money received therefor, or of notes and mortgages taken therefor, or of purchase-money remaining due upon con-
46 tracts, your orator cannot state, but prays that said defendants do discover and set forth; that the defendant the Southern Minnesota Railroad Company is deeply indebted and insolvent, and, if permitted to sell the remainder of said lands, will be unable to account for the value thereof.

And your orator further shows that said defendants have caused all the lands so granted to them respectively to be appraised and offered for sale, and have organized a land-department, and are offering for sale and threatening to dispose of the securities held by them for said purchase-money, and the balance of said lands so remaining unsold in small parcels to farmers, and others buying for actual occupation and improvement, and to convert and apply the proceeds thereof to their own use, and will continue so to sell and dispose of the same during the pendency of this

action unless restrained and enjoined by the process of this court; and said company deny your orator's right to an account to said proceeds, and claim to be the absolute owners of all said lands, properties, and franchises; all of which is in violation of the rights of your orator in the premises, and contrary to equity and good conscience.

To the end, therefore, that the said defendants may, if they can,
47 show cause why your orator should not have the relief prayed for, and may accordingly, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to each of the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written they are respectively required to answer; that is to say:

First. Were the lands designated in Schedule A, hereto attached, conveyed to you by the governor of the State of Minnesota by deed dated October 9, 1865?

Second. Were the lands designated and set forth in Schedule B, hereto annexed, conveyed to you by the governor of the State of Minnesota, by deeds dated January 6, 1866, December 5, 1866, and April 16, 1867?

Third. Were said lands described and set forth in Schedule A, the first lands received by you under the congressional land-grant of 1857?

Fourth. Were said lands described and set forth in Schedule B, the first lands received by you under the congressional land-grant of 1857?

Fifth. How many of said lands described and set forth in Schedule A, and deeded to you by the governor of the State of Minnesota,
48 have been sold or contracted to be sold, and when and to whom were they respectively sold or contracted, and for what price respectively, and how much of the purchase-money was paid in cash, and how much remains secured by notes and mortgages, or otherwise, and what is the amount now due on said notes and mortgages, and what are the names of the mortgagors, and what lands does each of said mortgages cover, and how much remains due upon contracts, and from whom and on what lands, and at what rate of interest, and from what date?

Sixth. How many of the lands set forth and described in Schedule B, hereto attached, have been sold or contracted to be sold; and what are the descriptions of said lands so sold or contracted to be sold; and what are the names and residences of the parties to whom they were respectively sold or contracted to be sold; and when were they sold or contracted to be sold, and for what prices respectively; and how much of the purchase-money has been paid in cash; and how much remains secured by notes and mortgages, or other security, or remains due upon contracts for sale; and what is the nature of said other security,
49 if any; and what are the names of the mortgagors or purchasers in said mortgages or contracts, and what lands do they cover respectively; and how much is now due thereon; and what rate of interest is it drawing, and from what date? And that the said defendants may answer in the premises, and may respectively be decreed to account for the said franchises and graded road-beds so conveyed and conferred upon them, respectively, as aforesaid, at their value at the time of the grant thereof by the State of Minnesota, with interest thereon; and may be decreed to account for the proceeds of all of said lands sold for cash, and interest thereon, and that a receiver be appointed by order of this honorable court; and that the defendants be decreed to deliver

up to said receiver all notes, mortgages, contracts, and other securities in their hands given for the purchase-money of said lands, or any of them; or in case that the defendants have parted with the possession of any of such securities, then that they be decreed to account respectively for the value of them; and that defendants be decreed to convey to said receiver all of said lands respectively not sold and conveyed by them, and to pay over to said receiver all moneys found due from them upon any such accounting as aforesaid; that said receiver, under
50 the direction of this court, do proceed to sell said lands and convert said securities into money, and apply the proceeds, together with such moneys as shall come into his hands, under the final decree which may be rendered herein, to the liquidation of the interest accrued upon said State railroad-bonds, and the remainder, or a sufficient amount thereof, to the liquidation of the principal thereof; and that a writ of injunction may be issued out of this honorable court, or by one of your honors, restraining the said defendants respectively during the pendency of this suit, and until a final decree therein, from selling or contracting to sell, or conveying, or in any manner disposing of or incumbering any of said lands so conveyed to them respectively, as aforesaid, and from disposing of, negotiating, or transferring any contract or securities held by them as security for the purchase-money of any lands heretofore sold by them; and that your orator may have such other or further relief in the premises as the nature of the case may require and to your honors shall seem meet:

May it please your honors to grant unto your orator the most
51 gracious writ of subpœna of the United States of America, to be directed to the said St. Paul and Sioux City Railroad Company, and the Southern Minnesota Railroad Company, thereby commanding them and every of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to perform and abide such order and decree as to your honors shall seem meet. And your orator will ever pray.

F. R. E. CORNELL,
GORDON E. COLE,
Solicitors and of Counsel for Complainant.

NORTHERN DISTRICT OF OHIO, *ss:*

Selah Chamberlain, being duly sworn, says that he is the complainant named in the foregoing bill of complaint; that he knows the contents of the said bill of complaint, and the same and every part thereof is true of his own knowledge.

SELAH CHAMBERLAIN.

Subscribed and sworn to before me this 9th day of May, 1872.
HENRY L. SHERMAN,
U. S. Cirt. Ct. Commr.

52 UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Earl Bill, clerk of the circuit court of the United States for the sixth circuit and northern district of Ohio, do hereby certify that I am well acquainted with the handwriting of Henry S. Sherman, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting. And I do further certify that he

was, at the time of signing the same, a United States commissioner, duly appointed under and by virtue of the acts of Congress in such behalf made and provided, by the circuit court of the United States of America for the sixth circuit and northern district of Ohio.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Cleveland, in said northern district of Ohio, this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL OF COURT.] EARL BILL, *Clerk.*

NOTE.—The defendant, the St. Paul and Sioux City Railroad Company, is required to answer the 1st, 3rd, and 5th of the foregoing interrogatories, and the Southern Minnesota Railroad *railroad* Company is required to answer the 2d, 4th, and 6th of said interrogatories.

53

F. R. E. CORNELL & GORDON E. COLE,
Solicitors, and of Counsel for Complainant.

54

SCHEDULE A.

Memorandum of lands conveyed by the State of Minnesota to the Minnesota Valley Railroad Company under date of October 9th, 1865.—List A of lands referred to in annexed deed.

Description.	Sec.	Town.	Range.	Acres.
S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼, & S. W. ¼	7	107	28	239. 62
S. E. ¼	17	"	"	160. 00
W. ½ of S. E. ¼, W. ½ of N. E. ¼, & W. ½	19	"	"	480. 00
N. W. frac. ¼	31	108	"	159. 69
N. frac. ½ of N. E. ¼ & E. frac. ½ of N. W. ¼	5	106	29	161. 55
S. E. ¼ & W. ½	1	107	"	480. 00
Whole of	3	"	"	638. 30
Whole of	5	"	"	628. 20
Whole of	7	"	"	628. 20
Whole of	9	"	"	640. 00
Whole of	11	"	"	640. 00
N. W. ½ & S. ½	13	"	"	480. 00
Whole of	15	"	"	640. 00
Whole of	17	"	"	640. 00
E. ½ of sec., S. E. ¼ of N. W. ¼, N. ½ of S. W. ¼ & lot 2	19	"	"	475. 05
Whole of	21	"	"	640. 00
Whole of	23	"	"	640. 00
W. ½	25	"	"	320. 00
Whole of	27	"	"	640. 00
Whole of	29	"	"	640. 00
N. E. ¼ E. ½ of S. E. ¼	31	"	"	240. 00
				10, 220. 67
				35, 347. 38

55

Whole of	31	108	30	624. 48
Lot 4	33	"	"	36. 00
Whole of	35	"	"	626. 20
W. ½ of N. E. ¼, N. W. ¼ & S. ½	1	"	31	558. 11
E. frac. ½ of N. E. ¼	1	"	"	79. 87
Whole of	3	"	"	633. 60
Whole of	5	"	"	633. 00
Whole of	17	"	"	459. 18
Whole of	4	"	"	640. 00
Whole of	11	"	"	640. 00
E. ½, E. ½ of N. W. ¼, S. W. ¼, & N. W. ¼ & S. W. ¼	13	"	"	600. 00
Whole of	15	"	"	640. 00
Whole of	17	"	"	640. 00
Whole of	14	"	"	457. 00
Whole of	21	"	"	640. 00
E. ½ of N. E. ¼, S. E. ¼ of N. W. ¼ & S. ½	23	"	"	440. 00
N. E. ¼ & W. ½ of N. W. ¼	27	"	"	240. 00
Whole of	24	"	"	640. 00
N. frac. ½	31	"	"	477. 83
Whole of	1	107	31	636. 80
Whole of	3	"	"	631. 80
Whole of	5	"	"	632. 80

Memorandum of lands conveyed, &c.—Continued.

Description.	Sec.	Town.	Range.	Acres.
Whole of	7	"	"	444.44
Whole of	9	"	"	640.00
Whole of	11	"	"	640.00
N. E. ¼ & W. ½	13	"	"	480.00
Whole of	15	"	"	640.00
Whole of	17	"	"	640.00
				51,936.49
56				51,936.49
Whole of	19	107	31	448.00
Whole of	21	"	"	640.00
N. ½ & S. W. ¼	23	"	"	480.00
Whole of	25	"	"	640.00
Whole of	27	"	"	640.00
Whole of	29	"	"	640.00
Whole of	31	"	"	456.12
Whole of	33	"	"	640.00
Whole of	35	"	"	640.00
S. E. ¼	13	108	"	160.00
Whole of	23	"	"	640.00
Whole of	25	"	"	640.00
E. ½, E½ of N. W. ¼ & S. W. ¼	27	"	"	560.00
Lots 2, 4, 5, 6, 7, & E. ½ of N. E. ¼	29	"	"	280.42
Whole of	31	"	"	445.22
Lots 1, 2, 3, 4, 5, 6, 7, & S. ½ of S. E. ¼	33	"	"	323.47
Whole of	35	"	"	640.00
S. ½ of N. E. ¼, S. ½ of W. ¼, & S. ½	7	"	29	463.01
S½	4	"	"	320.00
Whole of	15	107	30	640.00
Within the six-mile limits				63,773.77
W. ½ of S. E. ¼	29	107	28	80.00
N. E. frac. ¼ & of N. frac. ½ of N. W. ¼	1	106	29	239.48
S. W. ¼ of S. W. ¼	5	"	"	40.00
Whole of	7	"	"	633.00
N. W. ¼ of N. W. ¼, S. ½ of N. W. ¼ & S. W. ¼	9	"	"	280.00
N½ of N. E. ¼, & N. W. ¼	17	"	"	240.00
				1,512.48
57				1,512.48
S. E. ¼	35	107	29	160.00
S. E. ¼	11	106	30	160.00
Whole of	13	"	"	640.00
E. ½ & S. W. ¼	15	"	"	480.00
S. ½ of N. E. ¼, S. frac. ½ of N. W. ¼ & S. frac. ½	19	"	"	467.55
N. ½ S. W. ¼ & N. ½ of S. E. ¼	21	"	"	560.00
N. ½	23	"	"	320.00
N. ½ & N. ½ of S. W. ¼	29	"	"	400.00
N. W. ¼	3	105	31	162.75
Whole of	5	"	"	647.22
Whole of	25	106	"	640.00
N. E. ¼ of S. E. ¼	27	"	"	40.00
S. frac. ½	31	"	"	477.84
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, S. E. ¼ & W. ½	33	"	"	600.00
N. ½ & S. W. ¼, & N. W. ¼ of S. E. ¼	35	"	"	520.00
Within the 15-mile limits				7,787.89
N. W. ¼ & S. ½	3	108	29	486.72
Whole of	5	"	"	314.86
N. ½ of N. E. ¼ & N. ½ of N. W. ¼	7	"	"	154.39
N. frac. ½	9	"	"	296.95
N. E. ¼, N. W. ¼ & S. frac. ½	11	"	"	599.03
S. E. ¼ of N. E. ¼ & S. ½ of S. E. ¼	35	109	"	120.00
S½	1	108	30	320.00
Minnesota Valley & Winona S. Peter's conflicting 6 miles limits				2,291.95
One undivided half is				1,145.97
58 S. ½	3	108	30	320.00
N. E. frac ¼ & S. ½	5	"	"	481.48
Whole of	7	"	"	620.76
N. ½	9	"	"	320.00
Lots 4, 5, 6, 7, & 8	11	"	31	131.00
N. E. ¼ & W. ½	13	"	"	480.00
Whole of	15	"	"	640.00
S. E. ¼ of N. E. ¼, S. W. ¼ & S. E. ¼	17	"	"	360.50

Memorandum of lands conveyed, &c.—Continued.

Description.		Town.	Range.	Acres.
S. ½ of N. E. ¼, S. E. frac. ¼, & lots 4, 5, 7, 8, 10, & 11	19	"	"	480. 62
W. ½ N. E. ¼ of N. E. ¼ W. ½ N. E. ¼ & lot 4	21	"	"	442. 50
Lots 1 & 2	29	"	"	73. 09
Minnesota Valley & Winona & St. Peter, conflicting 15 miles limits				4, 349. 65
One undivided half is				2, 174. 83

RECAPITULATION.

Within the six miles limits	63,773. 77	
Within the 15 miles limits	7,787. 89	
		71,561. 66
Conflicting with the 6 miles limits of the Winona & St. Peter R. R.	2,290. 95	
One undivided half of which is	1,145. 97	
		1,145. 97
Conflicting with the 15 miles limits of the Winona and St. Peter's R. R.	4,349. 65	
One undivided half of which is	2,174. 83	
		2,174. 83
Total quantity of land conveyed by the annexed, and to the Minnesota Valley Railroad Company		74,882. 46

59

SCHEDULE B.

Memorandum of lands conveyed by the State of Minnesota to the Southern Minnesota Railroad Company under dates of (1) *January 6th*, 1866, (2) *December 5th*, 1866, *and* (3) *April 16th*, 1867.

(1ST) JANUARY 6TH, 1866.—LIST A OF LANDS REFERRED TO IN ANNEXED DEED.

Description.	Sec.	Town.	Range.	Acres.
1ST. WITHIN 6 MILES LIMITS.				
N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	9	103	8	120. 00
E. ½, S. E. ¼ & S. W. ¼, S. E. ¼	13	"	"	120. 00
N. ½ S. E. ¼ & N. ½ S. W. ¼	21	"	"	160. 00
S. W. ¼ N. W. ¼	27	"	"	40. 00
S. W. ¼ N. W. ¼	33	"	"	40. 00
N. W. ¼	1	104	"	174. 39
S. ½ S. W. ¼	5	"	"	80. 00
N. E. ¼ & S. W. ¼ S. W. ¼	17	"	"	200. 00
N. E. ¼ N. E. ¼	19	"	"	40. 00
S. W. ¼ N. W. ¼	23	"	"	40. 00
N. ½ S. E. ¼	31	"	"	80. 00
S. ½ N. W. ¼	35	"	"	80. 00
N. ½ N. W. ¼	27	105	8	80. 00
W. ½ N. W. ¼	29	"	"	80. 00
N. E. ¼ & E. ½ S. E. ¼	33	"	"	240. 00
S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	"	"	"	80. 00
N. E. ¼ & S. ½ S. E. ¼	7	102	9	240. 00
				1, 894. 39

60

				1, 894. 39
S. E. ¼ S. E. ¼	15	103	9	40. 00
N. ½ S. W. ¼	17	"	"	80. 00
S. E. ¼ S. E. ¼	19	"	"	40. 00
S. E. ¼ N. W. ¼	25	"	"	40. 00
N. E. ¼ N. W. ¼	29	"	"	40. 00
S. W. ¼ N. E. ¼ & W. ½ S. E. ¼ & N. E. ¼ S. W. ¼	35	"	"	160. 00
S. W. ¼	27	105	9	160. 00
W. ½ S. E. ¼ & S. E. ¼ S. W. ¼	31	"	"	120. 00
N. E. ¼ N. E. ¼	1	103	10	40. 10
W. ½ N. W. ¼ & N. W. ¼ S. W. ¼	3	"	"	120. 64
W. ½ S. E. ¼	7	"	"	80. 00
E. ½ N. E. ¼ & N. ½ N. W. ¼	9	"	"	160. 00
S. E ¼ N. W. ¼ & E. ½ S. W. ¼	13	"	"	120. 00
N. W. ¼ N. E. ¼ & N. ½ N. W. ¼	15	"	"	120. 00
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	35	"	"	160. 00
N. W. ¼ & S. E. ¼ S. E. ¼	13	104	10	200. 00
E. ½ S. E. ¼	15	"	"	80. 00

Schedule B—Continued.

Description.	Sec.	Town.	Range.	Acres.
W. ½ N. W. ¼ & N. W. ¼ S. W. ¼	23	"	"	120. 00
N. E. ¼ S. W. ¼	33	"	"	40. 00
E. ½ N. E. ¼ & N. E. ¼ S. E. ¼	23	103	11	120. 00
S. E. ¼ S. E. ¼	35	104	11	40. 00
N. ½ N. E. ¼ & N. W. ¼ & N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	1	103	8	358. 50
E. ½ S. W. ¼ & N. W. ¼ of S. W. ¼	3	"	"	120. 00
N. E. ¼ & N. W. ¼ N. W. ¼ & W. ½ S. E. ¼ & S. W. ¼	5	"	"	438. 28
N. E. ¼	7	"	"	160. 00
S. W. ¼ N. E. ¼ & E. ½ N. W. ¼ & S. W. ¼ of N. W. ¼	9	"	"	160. 00
N. ½ & N. W. ¼ S. W. ¼	13	"	"	360. 00
S. E. ¼ S. W. ¼	15	"	"	40. 00
				5, 611. 91
				5, 611. 91
61				
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ N. W. ¼ N. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & S. W. ¼ S. W. ¼	19	103	8	319. 69
S. E. ¼ N. E. ¼ & N. E. ¼ N. W. ¼ & S. ½ of S. E. ¼ & S. ½ S W. ¼	21	"	"	240. 00
N. E. ¼ N. E. ¼ & S. W. ¼ S. E. ¼	23	"	"	80. 00
N. E. ¼	25	"	"	160. 00
N. W. ¼ N. W. ¼	27	"	"	40. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. W. ¼ N. W. ¼ S. E. ¼ & S. ½ S. W. ¼	29	"	"	400. 00
E. ½ S. E. ¼ & S. W. ¼ S. E. ¼ & S. ½ S. W. ¼	31	"	"	199. 35
N. W. ¼ N. W. ¼	33	"	"	40. 00
S. W. ¼ S. E. ¼	1	104	"	40. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼ & S. E. ¼ S. W. ¼ & W. ½ of S. E. ¼	3	"	"	210. 17
S. E. ¼ N. E. ¼ & W. ½ N. W. ¼	5	"	"	122. 27
S. W. ¼ S. W. ¼	7	"	"	40. 33
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ N. W. ¼	11	"	"	160. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. ½ S. E. ¼	13	"	"	200. 00
N. E. ¼ N. E. ¼	15	"	"	40. 00
N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	19	"	"	200. 14
W. ½ N. W. ¼ & E. ½ S. E. ¼ & S. W. ½ S. E. ¼	21	"	"	200. 00
S. E. ¼ S. E. ¼	23	"	"	40. 00
S. ½ N. E. ¼ & S. E. ¼ & W. ½	25	"	"	560. 00
S. W. ¼ N. E. ¼ & N. W. ¼ N. W. ¼ & S. E. ¼ & E. ½ S. W. ¼	27	"	"	320. 00
E. ½ & E. ½ N. W. ¼ & E. ½ S. W. ¼	29	"	"	480. 00
S. ½ N. E. ¼ & S. E. ¼ N. W. ¼ & S. S. E. & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼ S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	31	"	"	279. 68
	33	"	"	280 00
				10, 383. 54
				10, 383. 54
62				
N. E. ¼ & N. ½ S. E. ¼ & S. W. ¼	35	104	8	400. 00
E. ½ N. W. ¼ S. W. ¼ N. W. ¼ & E. ½ S. W. ¼ & N. W. ¼ S. W. ¼	21	105	"	240. 00
N. W. ¼ N. W. ¼	23	"	"	40. 00
N. E. ¼	25	"	"	160. 00
W. ½ N. E. ¼ & N. E. ¼ S. E. ¼	29	"	"	120. 00
S. E. ¼ N. E. ¼ & W. ½ N. W. ¼ & S. ½	31	"	"	440. 00
N. W. ¼ S. E. ¼, N. E. ¼ S. W. ¼	33	"	"	80. 00
S. E. ¼ S. E. ¼	35	"	"	40. 00
N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	1	102	9	120. 00
E. ½ N. W. ¼ & N. W. ¼ N. W. ¼ & N. E. ¼ S. W. ¼	3	"	"	160. 04
N. E. ¼ & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	5	"	"	280. 02
W. ½ N. W. ¼ & N. ½ S. E. ¼ & W. ½ S. W. ¼	7	"	"	239. 61
S. E. ¼ N. W. ¼, N. W. ¼ S. E. ¼	9	"	"	80. 00
S. W. ¼ N. E. ¼	11	"	"	40. 00
N. E. ¼ & N. E. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	1	103	"	239. 90
S. ½ N E. ¼ & S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & N. ½ S. E. ¼ & S. W. ¼ S. W. ¼	3	"	"	320. 12
N. E. ¼ & W. ½ S. E. ¼ & S. W. ¼	5	"	"	401. 40
E. ½ N. E. ¼ N. W. ¼ N. E. ¼ & S. E. ¼ S. E. ¼	7	"	"	160. 00
N. E. ¼ N. W. ¼ S. W. ¼ N. W. ¼ & S. E. ¼ S. E. ¼	9	"	"	120. 00
E. ½ & N. W. ¼	11	"	"	480. 00
S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	13	"	"	80. 00
N. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. W. ¼ & N. E. ¼ S. E. ¼, W. ½ S. E. ¼ & N. ½ S. W. ¼	15	"	"	480. 00
E. ½ & N. W. ¼ & S. E. ¼ S. W. ¼	17	"	"	520. 00
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & W. ½	19	"	"	558. 78
N. E. ¼ & W. ½ S. E. ¼ & W. ½	21	"	"	560. 00
				16, 743. 41
				16, 743. 41
63				
N. E. ¼ S. E. ¼ S. W. ¼ S. E. ¼	25	103	9	80. 00
N. ½ N. W. ¼ & S. E. ¼ S. E. & W ½ S. E. ¼ & S. ½ S. W. ¼	27	"	"	280. 00
S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & S. W. ¼	29	"	"	280. 00
Sec	31	"	"	638. 52
N. E. ¼ & E. ½ N. W. ¼ & N. W. ¼, S. E. ¼ N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	33	"	"	400. 00

Schedule B—Continued.

Description.	Sec.	Town.	Range.	Acres.
N. W. ¼ N. W. ¼	35	"	"	40. 00
S. W. ¼ N. E. ¼	5	104	"	40. 00
N. E. ¼ N. E. ¼	21	"	"	40. 00
N. E. ¼ S. E. ¼	25	"	"	40. 00
N. E. ¼ S. E. ¼	27	"	"	40. 00
S. E. ¼ N. W. ¼	31	"	"	40. 00
S. W. ¼ S. W. ¼	33	"	"	40. 00
S. E. ¼ N. W. ¼	35	"	"	40. 00
N. W. ¼ N. E. ¼ & N. ½ N. W. ¼ & N. E. ¼ S. E. ¼	25	105	9	160. 00
S. W. ¼ S. W. ¼	31	"	"	39. 95
S. W. ¼ S. W ¼	1	102	10	40. 00
E. ½ S. E. ¼	3	"	"	80. 00
N. ½ N. E. ¼ & N. ½ N. W. ¼	11	"	"	160. 00
N. W. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	1	103	10	80. 28
N. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & S. W. ¼ S. W. ¼	3	"	"	160. 00
N. ½ N. W. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	5	"	"	158. 16
N. E. ¼ & E. ½ N. W. ¼ & E. ½ S. E. ¼	11	"	"	320. 00
E. ½ N. E. ¼ & S. W. ¼ S. W. ¼	13	"	"	120. 00
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	15	"	"	80. 00
N. W. ¼ N. W. ¼ & N. W. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	21	"	"	120. 00
N. ½ N. E. ¼ & N. E. ¼ N. W. ¼ & S. W. ¼ S. E. ¼	23	"	"	160. 00
S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼ & W. ½ S. W. ¼	27	"	"	160. 00
				20, 580. 32
64				20, 580. 32
S. E. ¼ N. W. ¼	29	103	10	40. 00
N. E. ¼ S. E. ¼	33	"	"	40. 00
S. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & E. ½ S. W. ¼	35	"	"	200. 00
N. E. ¼ N. E. ¼	3	104	10	41. 09
W. ½ S. W. ¼	7	"	"	74. 60
S. W. ¼ N. E. ¼	13	"	"	40. 00
W. ½ N. E. ¼	21	"	"	80. 00
N. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & E. ½ N. W. ¼ & E. ½ S. W. ¼	23	"	"	280. 00
N. E. ¼ & S. W. ¼ S. E. ¼	25	"	"	200. 00
S. W. ¼ N. E. ¼ & S. W. ¼ N. W. ¼ & S. W. ¼ S. W. ¼	29	"	"	120. 00
S. W. ½ S. E. ¼ & S. ½ S. W. ¼	31	"	"	118. 15
S. E. ¼ N. E. ¼ & S. E. ¼	33	"	"	200. 00
N. W. ¼ N. E. ¼	35	"	"	40. 00
S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	33	105	10	80. 00
Sec.	1	103	11	640. 04
N. ½ & N. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	11	"	"	400. 00
S. W. ¼ S. W. ¼	13	"	"	40. 00
S. ½ N. W. ¼ & S. E. ¼ S. E. ¼	23	"	"	120. 00
N. E. ¼ S. W. ¼	1	104	11	40. 00
N. E. ¼ N. E. ¼	35	"	"	40. 00
Within the six miles limits				23, 414. 20
2ND. WITHIN THE 15 MILES LIMITS.				
N. W. ¼ N. E. ¼ & N. W. ¼	3	101	4	197. 66
E. ½ S. E. ¼ & S. W. ¼ S. E. ¼	3	"	"	120. 00
N. W. ¼ S. E. ¼	5	"	"	40. 00
S. E. ¼ S. E. ¼	9	"	"	40. 00
				397. 66
65				397. 66
N. ½ N. E. ¼ & W. ½ N. W. ¼	11	101	4	160. 00
N. W. ¼ S. W. ¼ & S. E. ¼ S. W. ¼	7	102	4	80. 00
S. E. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	15	"	"	80. 00
S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	17	"	"	80. 00
N. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼ & S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	19	"	"	163. 63
N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	21	"	"	80. 00
S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	23	"	"	80. 00
N. E. ¼ N. E. ¼ & N. ½ N. W. ¼	27	"	"	120. 00
S. W. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	29	"	"	80. 00
N. W. ¼ N. W. ¼	31	"	"	41. 31
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	33	"	"	120. 00
N. E. ¼ S. W. ¼	33	"	"	40. 00
S. W. ¼ N. W. ¼ & lot 5	35	"	"	77. 00
N. E. ¼ S. E. ¼ & S. E. ¼ N. W. ¼	31	103	4	80. 00
N. W. ¼ S. W. ¼	19	105	4	40. 21
S. ½ N. E. ¼ & N. ½ N. W. ¼	1	101	5	159. 90
N. ½ N. W. ¼	3	"	"	80. 33
E. ½ S. E. ¼	9	"	"	80. 00
N. W. ¼	13	"	"	160. 00

Schedule B—Continued.

Description.	Sec.	Town.	Range.	Acres.
S. ½ N. W. ¼	1	102	5	80. 00
N. E. ¼ N. E. ¼	9	"	"	40. 00
N. W. ¼ S. E. ¼ & W. ½ S. W. ¼ & N. E. ¼ S. W. ¼	13	"	"	160. 00
N. W. ¼ N. W. ¼ & S. W. ¼ S. W. ¼	15	"	"	80. 00
N. E. ¼ N. W. ¼	17	"	"	40. 00
E. ½ & E. ½ N. W. ¼ & N. E. ¼ S. W. ¼	23	"	"	440. 00
S. ½ N. W. ¼ & E. ½ S. W. ¼	25	"	"	160. 00
S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼ & S. E. ¼ S. E ¼ & N. W. ¼ S. W. ¼	29	"	"	160. 00
N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	33	"	"	80. 00
N. ½ N. E. ¼ & S. ½ N. W. ¼	35	"	"	160. 00
				3, 600. 04
66				
				3, 600. 04
N. W. ¼ & S. ½	35	102	5	200. 00
S. W. ¼ S. W. ¼	33	103	5	40. 00
S. ½ N. W. ¼ & S. E. ¼ S. E. ¼	35	"	"	120. 00
S. ½ N. W. ¼	1	105	5	80. 00
N. ½ N. E. ¼ & S. W. ¼ S. W. ¼	3	105	5	118. 25
S. E. ¼ S. E. ¼	7	"	"	40. 00
S. E. ¼ N. E. ¼ & N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	11	"	"	160. 00
N. W. ¼ N. E. ¼	13	"	"	40. 00
N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	19	"	"	80. 00
N. E. ¼ & E. ½ S. E. ¼	23	"	"	240. 00
S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	23	"	"	80. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	25	"	"	80. 00
N. W. ¼ N. E. ¼ & S. ½ N. W. ¼	27	"	"	120. 00
N. W. ¼ N. E. ¼ & E. ½ N. W. ¼	29	"	"	120. 00
S. E. ¼ S. E. ¼ & N. W. ¼ S. W. ¼	1	101	6	80. 00
N. W. ¼ N. W. ¼	15	"	"	40. 00
S. W. ¼ N. E. ¼	17	"	"	40. 00
N. ½ N. E. ¼	5	102	6	82. 89
N. W. ¼ S. W. ¼ & S. ½ S. W. ¼	9	"	"	120. 00
E. ½ N. E. ¼ & N. E. ¼ S. E. ¼ & S. W. ¼ N. W. ¼	17	"	"	160. 00
S. E. ¼ N. E. ¼	29	"	"	40. 00
S. W. ¼ S. W. ¼	31	103	6	38. 44
N. W. ¼ N. W. ¼	1	105	6	38. 40
N. E. ¼ S. W. ¼	3	"	"	40. 00
S. W. ¼ S. E. ¼	5	"	"	40. 00
N. E. ¼ N. E. ¼ & S. E. ¼ S. W. ¼	13	"	"	80. 00
S. W. ¼ S. W. ¼	19	"	"	37. 96
N. E. ¼ S. W. ¼	23	"	"	40. 00
				5, 996. 48
67				
				5, 996. 48
N. W. ¼ N. E. ¼	5	101	7	38. 46
N. E. ¼ N. E. ¼	11	102	7	40. 00
N. W. ¼ N. W. ¼	17	"	"	40. 00
S. W. ¼ N. E. ¼	21	"	"	40. 00
N. W. ¼ & S. W. ¼ S. W. ¼	31	103	7	201. 35
N. E. ¼ S. E. ¼	33	"	"	40. 00
N. W. ¼ S. E. ¼	35	"	"	40. 00
E. ½ N. E. ¼ & N. E. ¼ S. E. ¼	3	101	8	80. 00
E. ½ S. W. ¼	7	"	"	80. 00
W. ½ N. E. ¼ & W. ½ S. E. ¼	4	"	"	160. 00
W. ½	11	"	"	320. 00
N. W. ¼ S. E. ¼	15	"	"	40. 00
N. W. ¼ S. W. ¼	17	"	"	40. 00
S. ½ S. E. ¼	3	102	8	80. 00
S. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	5	"	"	80. 00
S. W. ¼ S. E. ¼ & N. W. ¼ S. W. ¼	7	"	"	80. 05
S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	9	"	"	80. 00
S. E. ¼ N. W. ¼ & N. E. ¼ S. E. ¼	11	"	"	80. 00
N. W. ¼ N. W. ¼	13	"	"	40. 00
S. W. ¼ S. W. ¼	23	103	8	40. 00
S. ½ & N. W. ¼	25	"	"	480. 00
S. ½ & N. E. ¼	27	"	"	480. 00
E. ½ N. W. ¼	27	"	"	80. 00
S. ½ N. E. ¼ & N. W. ¼ S. W. ¼	33	"	"	320. 00
N. W. ¼ & S. E. ¼	35	"	"	320. 00
E. ½ S. W. ¼ S. W. ¼ S. W. ¼	35	"	"	120. 00
N. E. ¼ N. E. ¼	5	101	9	39. 52
E. *E.* ½	7	"	"	160. 00
				9, 636. 66
68				
				9, 636. 66
W. ½ S. W. ¼	9	101	9	80. 00
S. E. ¼ N. E. ¼ & S. ½ N. W. ¼	17	"	"	120. 00

Schedule B—Continued.

Description.	Sec.	Town.	Range.	Acres.
W. ½ S. W. ¼	21	"	"	80. 00
W. ½ N. E. ¼, & S. ½ N. W. ¼ & S. W. ¼	27	"	"	340. 20
S. E. ¼ S. W. ¼	7	102	9	0. 000
N. W. ¼ & S. E. ¼	13	"	"	0320. 0
S. ½ S. W. ¼	15	"	"	080. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	17	"	"	8000
W. ½ N. W. ¼ & N. E. ¼ S. E. ¼	"	"	"	120. 00
S. W. ¼	"	"	"	160. 02
N. E. ¼ N. E. ¼ & S. W. ¼ S. W. ¼	19	"	"	800. 0
N. E. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	23	"	"	80. . 0
S. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	31	"	"	80. 79
E. ½	1	101	10	160. 00
S. E. ¼ N. W. ¼ & N. ¼ S. W. ¼	5	"	"	120. 00
W. ½ N. W. ¼ & E. ½ S. E. ¼	7	"	"	156. 87
S. W. ¼	13	"	"	160. 00
E. ½ & N. W. ¼	17	"	"	480. 00
N. ½ S. W. ¼	17	"	"	80. 00
N. E. ¼ N. E. ¼	21	"	"	40. 00
S. ½ N. E. ¼ & S. ½ N. W. ¼ & S. ½	11	102	10	480. 00
N. ½ N. W. ¼ & W. ½ S. W. ¼	13	"	"	160. 00
E. ½ N. E. ¼ & N. W. ¼ N. W. ¼	15	"	"	120. 00
W. ½ N. W. ¼ & S. E. ¼ N. W. ¼	17	"	"	120. 00
S. E. ¼ S. E. ¼ & W. ½ S. W. ¼	"	"	"	120. 00
S. E. ¼ S. W. ¼	23	"	"	40. 00
N. E. ¼ N. E. ¼ W. ¼ N. E. ¼ & W. ½ S. W. ¼	25	"	"	200. 00
S. ½ S. W. ¼	29	"	"	80. 00
				13, 794. 52
69				13, 794. 52
N. E. ¼ & N. ½ of S. E. ¼	35	102	10	240. 00
N. ½ S. W. ¼	"	"	"	80. 00
S. E. ¼	1	101	11	160. 00
N. W. ¼ S. E. ¼	3	102	11	40. 00
S. E. ¼ N. E. ¼	11	"	"	40. 00
N. E. ¼ N. E. ¼	13	"	"	40. 00
N. E. ¼ S. E. ¼	21	"	"	40. 00
S. W. ¼ S. W. ¼	23	"	"	40. 00
S. E. ¼ N. E. ¼	31	"	"	40. 00
W. ½ S. E. ¼	33	"	"	80. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	35	"	"	80. 00
W. ½ N. W. ¼	"	"	"	80. 00
S. W. ¼ N. W. ¼	27	103	11	40. 00
N. ½ N. E. ¼ & N. ½ N. W. ¼	35	"	"	160. 00
N. E. ¼ S. W. ¼	"	"	"	40. 00
N. W. ¼ N. E. ¼	9	102	12	40. 00
S. E. ¼ N. E. ¼	17	"	"	40. 00
S. W. ¼ N. W. ¼	25	"	"	40. 00
N. W. ¼ N. E. ¼ & S. ½ N. E. ¼ & S. ½ N. W. ¼	27	"	"	200. 00
S. W. ¼ S. E. ¼	3	103	12	40. 00
N. ½ S. E. ¼	19	"	"	80. 00
E. ½ S. E. ¼	23	"	"	80. 00
E. ½ N. W. ¼ & S. W. ¼ S. E. ¼ & W. ½ S. W. ¼	25	"	"	200. 00
N. E. ¼ N. W. ¼	27	"	"	40. 00
W. ½ N. W. ¼, N. ½ S. E. ¼ & N. ½ S. W. ¼	31	"	"	247. 80
E. ½ N. E. ¼, E. ½ S. W. ¼	35	"	"	160. 00
N. W. ¼ N. E. ¼	11	102	13	40. 00
N. W. ¼ S. W. ¼	13	103	13	40. 00
				16, 242. 32
70				16, 242. 32
N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼	25	103	13	80. 00
N. W. ¼ S. E. ¼	"	"	"	40. 00
N. E. ¼ N. W. ¼	33	104	14	40. 00
N. W. ¼ N. E. ¼ & S. E. ¼ N. E. ¼	19	106	5	80. 00
N. W. ¼ S. W. ¼	33	"	"	40. 00
S. E. ¼ N. W. ¼ & E. ½ S. E. ¼	35	"	"	120. 00
N. W. ¼ S. E. ¼, N. E. ¼ S. W. ¼	35	"	"	80. 00
W. ½ S. W. ¼	"	"	"	80. 00
N. W. ¼ N. W. ¼	13	106	6	40. 00
S. W. ¼ S. W. ¼	15	"	"	40. 00
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼ & S. E. ¼ S. E. ¼	25	"	"	120. 00
N. E. ¼ S. E. ¼	29	"	"	40. 00
E. ½ N. W. ¼ & N. W. ¼ S. E. ¼	33	"	"	120. 00
S. E. ¼ N. E. ¼ & S. E. ¼ S. E. ¼	35	"	"	80. 00
N. E. ¼ S. W. ¼	31	104	12	40. 00
N. E. ¼ S. E. ¼	33	"	"	40. 00
E. ½ S. W. ¼	33	"	"	80. 00
Within 15 miles limits				17, 402. 32

Schedule B—Continued.

Description.	Sec.	Town.	Range.	Acres.
3D. CONFLICTING WITH SIX MILES LIMITS OF THE WINONA & ST. PETER RAILROAD.				
S. E. ¼ N. E. ¼	19	105	10	40. 00
S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	11	106	11	80. 00
Conflicting with six miles limits of the Winona & St. Peter Railroad				120. 00
One undivided half of which is				60. 00
71 4TH. CONFLICTING WITH THE 15 MILES LIMITS OF THE WINONA AND ST. PETER RAILROAD.				
N. W. ¼ N. W. ¼	3	105	7	40. 94
N. W. ¼ N. E. ¼	5	105	7	38. 97
S. W. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	7	"	"	80. 00
N. W. ¼ N. E. ¼ & S. W. ¼ N. W. ¼	9	"	"	80. 00
S. E. ¼ N. E. ¼ & S. ½ S. E. ¼	13	"	"	120. 00
W. ½ S. W. ¼	17	"	"	80. 00
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	23	"	"	80. 00
W. ½ S. E. ¼ & S. W. ¼	23	"	"	240. 00
N. E. ¼ & S. E. ¼ N. W. ¼	25	105	7	200. 00
W. ½ S. E. ¼ & N. ½ S. W. ¼	25	"	"	160. 00
N. E. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	17	105	8	80. 00
S. E. ¼ N. E. ¼ & N. W. ¼	14	"	"	197. 64
S. E. ¼ S. W. ¼	14	105	9	40. 00
N. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	26	"	"	80. 00
N. E. ¼ N. W. ¼	26	104	12	40. 00
N. W. ¼ S. E. ¼	21	104	13	40. 00
S. E. ¼ N. W. ¼	23	"	"	40. 00
S. E. ¼ N. W. ¼	25	"	"	40. 00
S. W. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	9	105	14	80. 00
N. ½ N. W. ¼	7	107	10	77. 27
N. ½ N. E. ¼ & N. W. ¼ S. E. ¼	17	"	"	120. 00
N. E. ¼ & S. W. ¼ S. E. ¼	1	107	11	196. 88
N. W. ¼ N. W. ¼ & S. W. ¼ S. E. ¼	3	"	"	79. 82
S. W. ¼ S. W. ¼	5	"	"	40. 00
W. ½ & S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	7	"	"	398. 04
				2, 752. 61
72				2, 752. 61
N. ½ N. E. ¼	9	107	11	80. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	11	"	"	120. 00
N. W. ¼	11	"	"	160. 00
W. ½ & S. W. ¼ N. E. ¼	15	"	"	360. 00
E. ½ S. W. ¼	17	"	"	80. 00
W. ½ N. E. ¼	23	"	"	80. 00
S. E. ¼ S. W. ¼	26	108	11	40. 00
S. E. ¼ S. E. ¼ & S. W. ¼	33	"	"	200. 00
N. E. ¼	3	107	12	160. 63
N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼	5	"	"	80. 81
N. ½ N. E. ¼ & N. E. ¼ N. W. ¼ S. E. ¼	9	"	"	160. 00
E. ½ N. E. ¼	11	"	"	80. 00
N. W. ¼ S. E. ¼ & W. ½ S. W. ¼	11	108	12	120. 00
S. ½ N. W. ¼ & N. ½ S. E. ¼	14	"	"	153. 41
W. ½ N. W. ¼	25	"	"	80. 00
N. ½ S. W. ¼	31	"	"	74. 92
S. E. ¼ N. E. ¼ & E. ½ S. E. ¼ & S. W. ¼ S. E. ¼ & W. ½ S. W. ¼	35	"	"	240. 00
S. ½ N. E. ¼	5	107	13	80. 00
E. ½ N. E. ¼ & S. ½	3	108	13	390. 58
S. W. ¼	11	"	"	160. 00
N. E. ¼	15	"	"	160. 00
N. ½ S. E. ¼	23	"	"	80. 00
W. ½ N. W. ¼	27	"	"	80. 00
S. ½ N. E. ¼ & N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼ & S. E. ¼ S. W. ¼	29	"	"	200. 00
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	27	109	13	120. 00
N. W. ¼ & N. ½ S. W. ¼	27	"	"	240. 00
S. W. ¼ S. W. ¼	"	"	"	40. 00
				6, 577. 96
73				6, 577. 96
N. W. ¼ N. E. ¼ & W. ½ S. E. ¼	33	109	13	120. 00
N. W. ¼ S. E. ¼	35	"	"	320. 00
Conflicting with the 15 miles limits of the Winona & St. Peter Railroad				7, 017. 96
One undivided half of which is				3, 508. 98

RECAPITULATION.

Within the six miles limits	23,414.20	
Within the fifteen miles limits	17,402.32	240,816.52
Conflicting with the six miles limits of the Winona & St. Peter Railroad	120.00	
One undivided half of which is	60	60.00
Conflicting with the fifteen miles limits of the Winona & St. Peter Railroad	7,017.96	
One undivided half of whch is	3,508.98	3,508.98
Total quantity of land conveyed by the annexed deed to the Southern Minnesota Railroad Company		44,385.50

Forty-four thousand three hundred eighty-five & 50-100 acres.

(2) DEC. 1866.—LIST B OF LANDS REFERRED TO IN ANNEXED DEED.

Description.	Section.		Range.	Acres.
N. W. ¼ S. E. ¼	1	103	4	40.00
N. E. ¼ S. E. ¼	5	"	"	40.00
S. E. ¼ N. W. ¼ & S. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	7	"	"	120.00
N. W. ¼ S. E. ¼ & S. ¼ S. W. ¼	11	"	"	120.00
Lots 3 & 4 & S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	13	"	"	158.85
				478.85
74				478.85
S. E. ¼ N. W. ¼ & W. ½ N. W. ¼	17	103	4	120.00
N. ½ N. E. ¼ & S. E. ¼ N. W. ¼	19	"	"	120.00
N. E. ¼ S. W. ¼	21	"	"	40.00
N. E. ¼ N. W. ¼	27	"	"	40.00
S. E. ¼ N. E. ¼ & S. W. ¼ S. W. ¼	29	"	"	80.00
N. E. ¼ N. W. ¼	5	104	4	40.00
S. E. ¼ S. W. ¼	7	"	"	40.00
Lots 1 & 2	11	"	"	6.30
Lots 7, 13	13	"	"	.80
N. W. ¼ S. E. ¼	17	"	"	40.00
N. W. ¼ S. E. ¼	33	"	"	40.00
N. W. ¼ S. E. ¼	35	"	"	40.00
S. W. ¼ N. E. ¼ & S. W. ¼ S. W. ¼ S. W. ¼	1	103	5	80.00
W. ½ N. W. ¼	7	"	"	71.09
E. ½ S. E. ¼ & N. W. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	9	103	"	200.00
N. E. ¼ N. E. ¼ & S. W. ¼ N. E. ¼	13	"	"	80.00
S. E. ¼ N. E. ¼	17	"	"	40.00
N. E. ¼ N. E. ¼ & S. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	19	"	"	120.00
S. E. ¼ N. E. ¼	21	"	"	40.00
N. W. ¼ N. E. ¼ & W. ½ N. W. ¼, N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	23	"	"	240.00
N. W. ¼ & S. E. ¼ S. E. ¼	27	"	"	200.00
N. E. ¼ S. E. ¼ & N. W. ¼ S. E. ¼	29	"	"	80.00
N. W. ¼ N. E. ¼ & N. ½ N. W. ¼	35	"	"	120.00
N. E. ¼ N. E. ¼, S. W. ¼ N. W. ¼	1	104	5	79.90
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	11	"	"	120.00
S. E. ¼ S. W. ¼	13	"	"	40.00
S. E. ¼ S. W. ¼	15	"	"	40.00
				2,636.94
75				2,636.94
S. E. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	33	104	5	80.00
W. ½ S. W. ¼	31	"	"	72.20
S. ½ S. E. ¼	25	105	"	80.00
N. E. ¼ S. W. ¼	27	"	"	40.00
N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	29	"	"	80.00
N. ½ N. E. ¼ & N. W. ¼ N. W. ¼	31	"	"	119.56
E. ½ N. W. ¼	33	"	"	80.00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼, S. E. ¼	35	"	"	160.00
N. ½ & N. W. ¼, S. E. ¼	1	103	6	346.81
S. E. ¼ S. E. ¼	3	"	"	40.00
S. E. ¼ S. E. ¼	5	"	"	40.00
W. ½ N. W. ¼	7	"	"	73.92
S. E. ¼ N. E. ¼	15	"	"	40.00
S. W. ¼ N. W. ¼ & N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼ & S. E. ¼ S. W. ½ & N. W. ¼ S. W. ¼	17	"	"	200.00
N. E. ¼ N. E. ¼ & W. ½ S. W. ¼	19	"	"	114.21
S. W. ¼ S. W. ¼	21	"	"	40.00
S. E. ¼ N. E. ¼	25	"	"	40.00
S. W. ¼ S. E. ¼	27	"	"	40.00
N. E. ¼ S. E. ¼	29	"	"	40.00

List B of lands, &c.—Continued.

Description.	Section.		Range.	Acres.
S. W. ¼ N. W. ¼	35	"	"	40. 00
W. ½ N. E. ¼ & N. E. ¼ N. W. ¼	1	104	6	121. 87
N. ½ N. W. ¼	3	"	"	81. 09
W. ½ N. W. ¼ & S. E. ¼ S. E. ¼ & W. ½ S. W. ¼	5	"	"	200. 20
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	7	"	"	80. 00
S. E. ¼ S. E. ¼ & S. W. ¼	9	"	"	200. 00
S. W. ¼ N. W. ¼ & N. ½ S. W. ¼	13	"	"	120. 00
S. E. ¼ N. E. ¼ & N. W. ¼ N. W. ¼	15	"	"	80. 00
				5, 286. 80
76				
				5, 286. 80
S. ½ N. E. ¼ & S. E. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	17	104	6	160. 00
N. E. ¼ S. E. ¼	21	"	"	40. 00
N. W. ¼ N. W. ¼	31	105	6	38. 25
S. ½ S. E. ¼	33	"	"	80. 00
S. ½ S. W. ¼	35	"	"	80. 00
Lot 4	13	104	4	68. 90
				5, 753. 95

(3.) April 16, 1867.—Lands in place amounting to two thousand eight hundred and twenty-seven $\frac{89}{100}$ acres, and described as follows, to wit:

IN THE COUNTY OF HOUSTON.

The north half of the northeast quarter of section o[illegible]; the southwest quarter of the southeast quarter, and the northwest quarter of the northeast quarter of section three; the northeast quarter of the northeast quarter, and the north half of the southwest quarter of section five; and the northeast quarter of section seven; and the southeast quarter of the southeast quarter of section nine; and the north half of
77 the northeast quarter and the southwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter, and the southeast quarter of the northeast quarter of section thirteen; and the southwest quarter of the southeast quarter of section seventeen; and the southeast quarter of nineteen; and the northeast quarter of the northeast quarter, and the northwest quarter of the northwest quarter, and the southeast quarter of the northwest quarter of section twenty-one; and the northeast quarter of the southwest quarter, and the southwest quarter of the southwest quarter of section twenty-three; and the southwest quarter of the southeast quarter of section twenty-five; and the northwest quarter of the northwest quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-seven; and the northwest quarter of the northwest quarter of section twenty-nine; and the southwest quarter of the northeast quarter of section twenty-five, in township one hundred and three north, and range seven west of the fifth principal meridian: and the northeast quarter of the northwest quarter of section one; and the north half of the northeast quarter, and the southeast quarter of the northeast quarter, and the north half of the
78 northwest quarter, and the southeast quarter of the northwest quarter, and the southwest quarter of the southeast quarter of section three; and the northwest quarter of the northwest quarter of section seven; and the northwest quarter of the northwest quarter, and the southeast quarter of the northwest quarter of section eleven; and the northeast quarter of the northwest quarter, and the southwest quarter of

the northwest quarter, and the southeast quarter of the southwest quarter of section thirteen; and the northeast quarter of the southeast quarter of section seventeen; and the southeast quarter of the southwest quarter of section nineteen; and the northwest quarter of the northeast quarter, and the southeast quarter of the northeast quarter of section twenty-seven; and the southwest quarter of the southeast quarter, and the southwest quarter of the northwest quarter of section thirty-three, in township one hundred and four, range seven.

IN THE COUNTY OF WINONA.

The southeast quarter of the southeast quarter of section twenty-one; and the south half of the southwest quarter, and the south half of the southeast quarter of section twenty-five; and the southeast quarter of the northwest quarter, and the south half of the southeast quarter of section twenty-nine; and the northeast quarter, and the north
79 half of the northwest quarter, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section thirty-five, in township one hundred and five, range seven.

Whereupon a writ of subpœna was duly issued out of said court under the seal thereof, duly tested, and is, with the return thereon, endorsed in the words and figures following, to wit:

80 UNITED STATES OF AMERICA,
District of Minnesota, ss:

The President of the United States of America to the St. Paul & Sioux City Railroad Company and the Southern Minnesota Railroad Company, greeting:

You are hereby commanded to appear before our judges of our circuit court of the United States of America for the district of Minnesota, at Saint Paul, in said district, on the first Monday in the month of August next, to answer the bill of complaint of Selah Chamberlain, this day filed in the clerk's office of said court, in said Saint Paul, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Minnesota to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Saint Paul aforesaid, this seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth year.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Saint Paul aforesaid, on or before the day to which this writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

H. E. MANN, *Clerk.*

GORDON E. COLE & F. R. E. CORNELL,
Plaintiff's Solicitors.

81 (Indorsed:) No. . Circuit court of the United States, district of Minnesota. Selah Chamberlain vs. The St. Paul & Sioux City Railroad Co. and The Southern Minnesota Railroad Co. Chancery

subpœna. Returnable first Monday in August, A. D. 1872. Filed June 22d, A. D. 1872. H. E. Mann, clerk. Gordon E. Cole & F. R. E. Cornell, plaintiff's solicitors.

I hereby certify that the within is a true copy of the original subpœna in chancery delivered to me for service.

U. S. Marshal.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within subpœna on the St. Paul & Sioux City Railroad Company, by handing to and leaving with Jno. F. Lincoln, superintendent of said road, personally, a true copy thereof, at St. Paul, in said dist., June 19, 1872.

AUG. ARMSTRONG,
U. S. Marshal,
By J. R. CLEVELAND, *Dep.*

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within subpœna on the Southern Minnesota R. R. Co., by handing to and leaving with H. W. Holley, general manager of said R. R. Co., personally, at Albert Lea, in said dist., June 19, 1872.

AUG. ARMSTRONG,
U. S. Marshal,
By J. P. McILRATH, *Depy.*

$23.20.

82 And afterwards, to wit, on the 22nd day of June, A. D. 1872, an order to show cause why an injunction should not issue, as prayed for in said bill, theretofore made by the Hon. Samuel F. Miller, one of the judges of said court, was duly returned by the marshal of said district into the clerk's office of said court, with his return of service thereof thereon indorsed; which order to show cause and return are in the words and figures following, to wit:

83 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
ST. PAUL & SIOUX CITY RAILROAD COMPANY and The Southern Minnesota Railroad Company.

On reading the sworn bill of complaint of the plaintiff on file, it is ordered that the defendant The Southern Minnesota Railroad Company do show cause before this court and the judges thereof, at the circuit court-room, in the city of Saint Paul, in said district, on the 26th day of June, A. D. 1872, at 10 o'clock in the forenoon of that day, why a temporary writ of injunction during the pendency of this action should not issue in accordance with the prayer of said bill, enjoining and restraining said defendant from interfering with, selling, conveying, or disposing of the lands and securities described in said complaint, or any of them, during the pendency of this action.

And it is further ordered that the plaintiff cause notice to be served on said defendant by causing a copy of this order to be served on said defendant at least five days before the day herein appointed for hearing said motion.

SAM. F. MILLER, *Judge.*

84 (Indorsed:) U. S. circuit ct., dist. of Minnesota. Selah Chamberlain vs. The St. Paul & Sioux City R. R. and The Southern Minn. R. R. Notice for injunction.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within notice on the Southern Minn. R. R. Co., by serving the same on H. W. Holly, gen'l manager of said road, personally, at Albert Lea, in said dist., June 19, 1872.

AUG. ARMSTRONG,
U. S. Marshal.
By J. P. MCILRATH, *Dep.*

Filed June 22, 1872. H. E. Mann, clerk.

85 And afterwards, to wit, on the twenty-sixth day of June, A. D. 1872, at the June term of said court, in said year, the following proceeding, among others, was had, to wit:

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD Company et al.

The hearing upon the order to show cause heretofore issued in this cause is postponed until Monday morning, July 1, 1872.

And afterwards, to wit, on the 1st day of July, A. D. 1872, at said June term of said court, the following proceeding, among others, was had, viz:

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL AND SIOUX CITY RAILroad Company et al.

And now the motion for an injunction heretofore noticed, coming on to be heard, is argued by counsel—Gordon E. Cole, esq., for the motion, and John M. Gilman, esq., against the motion—and is submitted to the court, and by the court held under advisement.

86 And on the same day the certificate of Charles McIlrath, commissioner of the State land-office, was filed in the clerk's office of said court; which certificate is in the words and figures following, viz:

87 STATE OF MINNESOTA, LAND-OFFICE,
Saint Paul, June 29th, 1872.

I hereby certify that it appears from the records in this office that the first lands certified by the Secretary of the Interior to this State, under the act of Congress of March 3d, 1857, (entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State,") to aid in the construction of the Southern Minnesota Railroad, were of the date of May 23d, 1860; and I further certify that it appears from the records of this office that no lands were conveyed by the State to the Southern Minnesota Railroad Company, except for and on account of road actually completed and constructed in sections of at least ten miles.

[SEAL.]

CHAS. MCILRATH,
Commissioner State Land-Office.

88 And on the same day the affidavit of John M. Gilman was filed in the clerk's office of said court; which certificate is in the words and figures following, to wit:

89 United States circuit court for Minnesota. June term, 1872.

SELAH CHAMBERLAIN
vs.
THE SOUTHERN MINNESOTA RAILROAD COMPANY. } In chancery.

DISTRICT OF MINNESOTA:

J. M. GILMAN, being duly sworn, deposes and says that he is attorney for defendant in this action, and has acted as attorney for said company in sundry cases since its organization, and become quite familiar with its history and affairs, and he says that Selah Chamberlain, the complainant in this action, was never contracted with or employed by said defendant The Southern Minnesota Railroad Company to grade or prepare the road-bed of the road of said defendant, or any part of the same, or do any other work for defendant, and that he never did do any work for defendant; that of the twenty miles of road-bed graded by complainant on the line of and for the old Southern Minnesota Railroad Company only about miles was ever adopted or used by this defendant, and that the portion so adopted, when defendant commenced the construction of said road in 1865, was so
90 overgrown with trees and brush, and the embankments so much worn away, and the cuts so filled with wash, and the wood-work, bridges, &c., rotted away, that the whole work which had been done was of very little value to defendant.

And deponent further says there never was one hundred and twenty sections of land, or any other quantity, definitely fixed, set apart, or certified to the State of Minnesota by the United States pertaining to the line of road constructed by defendant as land specially designated to be sold in advance of the construction of said road, and that no land was conveyed to this defendant by the State in advance of the construction of the road, but only as the road was constructed in sections of at least ten miles, and then only such lands as pertained to and were applicable to the constructed portion of said road under the act of Congress making the grant. And deponent further says that the consideration for the sale and conveyance by the State to this defendant of the lands, franchises, and property mentioned and referred to in the bill was the construction of said line of road by defendant, in aid of which said lands were granted by Congress. And de-
91 ponent further says that said lands were so purchased by said defendant, and conveyance taken from the State in good faith and without any knowledge or notice or belief that the State held the same in trust as alleged in the bill of complaint, or upon any other trust than that expressed in the act of Congress making the grant of said lands to the State.

That all the franchises and property granted to or acquired by defendant, under the said legislative act of March 4, 1864, referred to in the bill, were so acquired in consideration of the construction of the said road by the defendant, and were so taken by the defendant in good faith and without any knowledge or notice of any such trust in favor of complainant as is alleged in the bill, and without any knowlege or notice of any legal or equitable claim upon the same in favor of

the complainant or any one else. And the deponent further says that said Southern Minnesota Railroad Company is not insolvent.

And deponent further says that the franchises, road, and lands of said defendant, referred to in the bill, have been mortgaged by said company to secure the bonds of said company issued for the purpose of raising means to construct and equip said road, and that said
92 bonds so secured have been sold, and are now outstanding to the amount of millions of dollars, and are held by parties who have taken the same in good faith, and paid value therefor, relying upon said mortgage security.

And deponent further says that the Root River Valley and Southern Minnesota Railroad Company did not locate any part of its line of road prior to July, 1857.

That the first land certified by the United States to this State under the act of Congress of March 3, 1857, referred to in the bill, applicable to the line of road constructed by the defendant, was May 23, 1860.

That not a mile of the line of road mentioned in said act of Congress, from La Crescent up the valley of the Root River, was constructed by any one except the defendant, and that the defendant commenced the construction of said road in 1865, and has since been constantly engaged in the construction and operation of said line of road, and now has over one hundred and seventy miles of road completed and in operation.

And deponent further says, during all the time that defendant has been constructing said road and receiving conveyances of lands from the State therefor, the said complainant, Selah Chamberlain, has
93 often been in the State, and has been concerned and interested in the construction of a land-grant road under the same kind of legislation and similar state of facts as those pertaining to the defendant, and has had full knowledge and notice of the legislation under which defendant was acting, and that defendant was relying in good faith upon receiving a clear and free title to said lands from the State, and had mortgaged the same, and issued its bonds, secured by said mortgage, to raise means to build and equip said road, and that he never claimed, gave notice, or intimated to defendant that he had any equitable claim or otherwise upon any of the property so obtained from the State prior to the commencement of this action.

J. M. GILMAN.

Subscribed & sworn to before me this 1st day of July, 1872.
H. E. MANN, *Clerk.*

94 And afterwards, to wit, at said June term of said court, and on the third day of July, A. D. 1872, the following proceeding, among others, was had, viz:

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD Company et al.

And now the motion for the appointment of a receiver, and for a writ of injunction having been submitted to the court, and by the court held under advisement, and the court being fully advised in the premises, it is by the court ordered that said motion be and the same is hereby denied.

And afterwards, to wit, at rules, at the clerk's office of said court, on the 5th day of August, A. D. 1872, the following proceeding, among others, was had, viz:

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD Company and the Southern Minnesota Railroad Company.

And now come the defendants, by their solicitors—J. M. Gilman, esq., for the defendant The Southern Minnesota Railroad Company, and E. C. Palmer, esq., for the defendant The St. Paul & Sioux City Railroad
95 Company—on whose motion it is ordered that the appearance of the said defendants be, and the same is hereby, entered.

And afterwards, to wit, on the first day of November, A. D. 1872, came the said defendant The Southern Minnesota Railroad Company, by John W. Gilman, esq., its solicitor, and filed in the clerk's office of said court its separate answer to the plaintiff's bill of complaint in the words and figures following, to wit:

96 In the circuit court of the United States for the district of Minnesota. In equity.

SELAH CHAMBERLAIN, PLAINTIFF,
agst.
THE ST. PAUL & SIOUX CITY RAILROAD Company, and the Southern Minnesota Railroad Company, defendants.

The separate answer of the defendant The Southern Minnesota Railroad Company, to the bill of complaint of Selah Chamberlain, plaintiff.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

That this defendant admits that this defendant is a corporation duly incorporated by and under the laws of the State of Minnesota, and established and doing business in and a citizen of said State. That
97 this defendant admits that on the 3d day of March, 1857, the Congress of the United States passed an act, approved on that day, entitled as in the plaintiff's bill alleged; but denies that by said act of Congress the United States *garnted* to the then Territory of Minnesota any present and immediate interest in any lands whatever; and denies that by the terms or provisions of said act the then Territory of Minnesota acquired any present and immediate interest in any lands whatever.

That this defendant admits that it was provided by the said act of Congress that the lands in such act mentioned were to be disposed of in the manner in folio numbered five (5) and the first six (6) lines of folio numbered six (6) in plaintiff's bill alleged.

That this defendant admits that on the 22d day of May, 1857, the

legislature of said Territory of Minnesota passed an act, approved on that day, entitled as in the plaintiff's bill alleged, and admits that by such act of legislature the Root River Valley and Southern Minnesota Railroad Company, a corporation created and having powers as in plaintiff's bill alleged, was authorized and empowered to survey, locate, and construct and perpetually to have, use, maintain, and operate their certain
98 lines of railroad in the plaintiff's bill alleged; but this defendant denies that by such act of legislature the then said Territory disposed of or conferred to or upon the said The Root River Valley and Southern Minnesota Railroad Company any present or immediate interest, right, or title in or to any lands whatever; and denies that by the terms and provisions of said act of legislature the said The Root River Valley and Southern Minnesota Railroad Company acquired any present or immediate interest, right, or title in or to any lands whatever.

That this defendant admits that on the 23d day of May, 1857, the legislature of the then said Territory changed the name of the said The Root River Valley and Southern Minnesota Railroad Company, as in the plaintiff's bill alleged.

That this defendant admits that by an act purporting to be an amendment to the constitution of the State of Minnesota, adopted at the date in the plaintiff's bill alleged, provision was made for a loan to the said The Southern Minnesota Railroad Company, for the purposes, in the manner, to the amount, and upon the terms in the plaintiff's bill alleged, of the credit of the State; but this defendant denies
99 that said alleged amendment to the constitution was ever lawfully made and adopted, or ever became or was or now is legally a part of the State constitution.

That this defendant admits that on the 12th day of August, 1858, the legislature of the said State of Minnesota passed an act, approved on that day, entitled "An act concerning land-grant railroads," wherein and whereby provision was made, as in the plaintiff's bill alleged to be by that act made.

That this defendant admits, on information and belief, that afterwards and prior to the issuance of any bonds authorized by said constitutional amendment to the said The Southern Minnesota Railroad Company, the said The Southern Minnesota Railroad Company, on the 13th day
100 of October, 1858, executed and delivered to the governor a conveyance to the State of Minnesota, in the words and figures in the plaintiff's bill particularly set forth.

That this defendant admits that under the date of the 1st day of October, 1858, but acknowledged and delivered on the 16th day of May, 1859, the said The Southern Minnesota Railroad Company executed its deed of trust to Benjamin Pringle and Andrew G. Chatfield, conveying the property, so far as it could by law convey the same, upon the trusts, for the purposes, with the powers, and upon the conditions in the plaintiff's bill alleged; but denies that by either of said conveyances the said The Southern Minnesota Railroad Company could or did convey to the said State any right or title in or to any of the lands in such conveyances described.

That this defendant admits that the said The Southern Minnesota Railroad Company thereupon entered upon the construction of its railroad, but as to whether it ever made any contract with the plaintiff, and as to whether the plaintiff ever did or caused to be done, any work upon such road, and as to whether the plaintiff ever laid out and expended any moneys in causing any work to be done upon such
101 road, this defendant has no knowledge nor information save from the statements in plaintiff's bill.

And this defendant admits that as often as any ten miles of the said The Southern Minnesota Railroad Company's Railroad was completed ready for putting the superstructure thereon, such company produced to the governor of said State satisfactory evidence thereof, as required by the said constitutional amendment, and transferred to the treasurer of said State an amount of its first-mortgage bonds, secured by mortgage as in the plaintiff's bill alleged, corresponding to the State bonds issued to it, and thereupon the governor of said State caused to be issued to said company its bonds in the form and manner and to the amounts in the plaintiff's bill alleged, and with the coupons thereto attached in the plaintiff's bill alleged.

That this defendant admits that after the delivery to the said The Southern Minnesota Railroad Company of the State bonds in the plaintiff's bill mentioned, the said The Southern Minnesota Railroad Company transferred the whole thereof; but as to when said bonds were so transferred, and as to whether any part or number thereof, and, if any, what, part or number thereof were so transferred to the
102 plaintiff, this defendant has no knowledge nor information save from the allegations of plaintiff's bill; and this defendant denies that the said The Southern Minnesota Railroad Company ever endorsed any of said bonds.

That this defendant admits that each of said bonds, at the time of the transfer thereof, had upon it, appended to the bottom of the same, an instrument in the words and figures in the plaintiff's bill particularly set forth.

That this defendant admits that the said The Southern Minnesota Railroad Company never made any payment of the interest on said State bonds, except as in plaintiff's bill alleged, and made default in the payment of the interest on the first-mortgage bonds in the plaintiff's bill mentioned, and abandoned work on its railroad, as in the plaintiff's bill alleged, and that no more State bonds were thereafter issued to the said The Southern Minnesota Railroad Company.

That this defendant has been informed and believes that no part of the principal or interest of said State bonds has been paid except as in the plaintiff's bill alleged; that this defendant admits that the governor of said State of Minnesota duly caused the trust-deed in the
103 plaintiff's bill mentioned to be foreclosed, as in the plaintiff's bill alleged, and the lands, properties, rights, privileges, and franchises granted and conveyed in and by said trust-deed to be exposed to sale to public a'ction, as in the plaintiff's bill alleged, and duly bid off and purchased the same for and in the name of the State of Minnesota, and caused the necessary conveyances to effectuate such sale to be executed and filed, as in the plaintiff's bill alleged.

That this defendant admits that on the 4th day of March, 1864, the legislature of the State of Minnesota passed an act, approved on that day, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," by which all the rights, benefits, privileges, property, franchises, and interests of the said The Southern Minnesota Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company before that time done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same or any part thereof
104 by the governor of the State of Minnesota, and a bidding in and purchase by the governor of the State of Minnesota for the ben-

efit of the State of Minnesota, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the Winona & St. Peter at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and in the several acts amendatory thereof, were granted and transferred to certain persons in such act of legislature named, and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, had or might or could have had, by reason of the passage of any acts of legislature; and this defendant admits that by said act of 1864 this defendant was clothed with its corporate rights and franchises, and acquired all the interest which the State of Minnesota had acquired under and by virtue of the aforesaid
105 act of Congress in and to all that part of the lands by said act of Congress appropriated to aid in the construction of a railroad from La Crescent via Target Lake up the valley of the Root River to a point of junction east of range seventeen, with that certain line of road in said act of Congress designated as a line from Winona, via St. Peters, to a point on the Big Sioux River, south of the 45th parallel of north latitude; and this defendant admits that the State of Minnesota was, at the date of said act, seized and possessed of the lands described in Schedule B, to the plaintiff's bill annexed, but denies that the State of Minnesota ever acquired any right or interest in or to such lands, or in or to any part thereof, by virtue of any act, deed, or conveyance by the said The Southern Minnesota Railroad Company done or suffered, or in any other manner than through the act of Congress aforesaid; and denies that the said The Root River Valley and Southern Minnesota Railroad Company, or the said The Southern Minnesota Railroad Company, was ever authorized to sell any of such lands, or had any of the property, rights, franchises, interests, or things granted by said act of legislature of 1864 were ever held in trust, or as a fund by said State for the payment of any of said State bonds, or of any part of the princi-
106 pal or interest thereof, and as to whether at the time of the passage of said act of 1864, the plaintiff was the owner of any of said State bonds, and, if owner of any, of how many, this defendant has no knowledge nor information save from the allegations of plaintiff's bill. And this defendant denies that the plaintiff ever had any right or claim to have any part of said bonds paid out of the property, rights, franchises, interests, or things, or the lands aforesaid, and denies that any of the property, rights, franchises, interests, or things, or the rights and interests of said State in the lands aforesaid, granted and conferred upon this defendant by the said act of legislature, were that act conferred or granted without consideration; but, on the contrary, this defendant avers that by said act it was expressly provided that this defendant should not acquire any title to the property, rights, franchises, interests, or things aforesaid, nor to any portion thereof, until this defendant should fully complete and put in running order ten miles of said railroad; and it was further provided by said act that upon the construction and completion of ten miles of said road, with the cars running thereon,
107 the governor should certify the same to the Secretary of the Interior, and thereupon, and not before, this defendant might demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land to which the State might then be entitled under the provisions of the

act of Congress aforesaid; and that upon the construction and completion of each and every consecutive twenty miles of said railroad, the governor of said State, acting for and on behalf of said State, should convey the lands pertaining to such twenty miles of railroad appropriated by said act of Congress as aforesaid to aid in the construction of such road to this defendant. And it was further provided by said act that all the grants by said act of legislature made were made upon the express condition that this defendant should build and construct ten miles of its road within two years from the 20th day of January, 1864, and thirty miles thereof within three years from said day, and fully build and equip its road by the route in said act designated; and that, upon failure of this defendant to keep and perform any of such conditions, all the unbuilt portions of raid road, with the rights, properties, and fran-
108 chises thereunto appertaining, should revert to the said State without any other act or ceremony whatever. And this defendant, in pursuance of the requirements and conditions aforesaid of said acts, and of the various acts of the said legislature amendatory thereof, has built, completed, equipped, furnished, and maintained more than one hundred and seventy miles of its said road, and in such building, completion, equipment, furnishing, and maintaining such road has necessarily laid out and expended large sums of money, amounting in the aggregate to more than five millions of dollars. And this defendant admits that the State of Minnesota cancelled all the bonds to the said State issued by the said original Southern Minnesota Railroad Company, as in the plaintiff's bill alleged.

That this defendant admits that, at the dates in the plaintiff's bill alleged, the governor of the State of Minnesota conveyed to this defendant certain of the lands appropriated by the said act of Congress to aid in the construction of the line of road owned and built by this defendant, as in this answer before stated, and admits that said lands amount in the aggregate the number of acres in the plaintiff's bill alleged, and alleges that the same embraced all the lands which the
109 said State was entitled to dispose of under said act of Congress to aid in the construction of defendant's said line of road; but this defendant denies that any part of such lands were ever vested in the said original Southern Minnesota Railroad Company, and denies that such company was ever authorized to sell or dispose of the same; and this defendant denies that such conveyance was without consideration, but, on the contrary, avers that such conveyance was made in pursuance of and in obedience to the provisions of said act of legislature of 1864; that prior to such conveyance this defendant had accepted the grants in said act of legislature contained, and had accepted and undertaken to perform the obligations by said act imposed upon this defendant, and had entered upon the performance thereof, and had fully built, constructed, and completed more than ten miles of its said road, and in such building, construction, and completion had necessarily laid out and expended large sums of money, amounting in the aggregate to more than one million dollars; that this defendant denies that at the date of the act of legislature of 1864, or at the dates of the conveyances thereof to this defendant, the said lands were of any
110 greater average value than one dollar and twenty-five cents per acre; and denies that said lands are now of a greater average value than five dollars per acre; and denies that the rights, franchises, privileges, and graded road-bed granted to this defendant by act of legislature aforesaid were of any value whatever.

That this defendant denies that at or prior to the 4th day of March,

1864, or at or prior to the deeding of said lands by the governor of the State of Minnesota to this defendant, or at or prior to the exhibition of plaintiff's bill, this defendant had any knowledge or notice whatsoever that the said State of Minnesota held any of said lands upon any trust whatever, except the trusts created by the said act of Congress; and denies that at or prior to the dates aforesaid this defendant had any knowledge or notice whatsoever that the said State held any of the properties, rights, franchises, or things by said act of 1864 to this defendant granted, save the lands aforesaid, upon any or any manner of trust whatsoever; and this defendant denies that at or before the dates aforesaid this defendant had any notice or knowledge whatsoever that the plaintiff, or any holder or holders of
111 any of the State bonds aforesaid, had or claimed to have any right or equity to or claim or lien upon any of the properties, rights, franchises, or things by said act of legislature to this defendant granted, or any of the lands aforesaid, for the payment of the principal or interest, or any part thereof, of the bonds aforesaid; but this defendant has been informed and believes that at the dates aforesaid no part of the principal or interest of said State bonds have been paid, except as in the plaintiff's bill alleged.

And this defendant admits that it has entered into the possession of the lands, properties, and franchises to this defendant granted and conveyed as aforesaid, and has built and is operating portions of its line of road as hereinbefore alleged; and admits that it has sold and disposed of portions of the lands to it conveyed as aforesaid absolutely, and has mortgaged in good faith, and long before the exhibition of plaintiff's bill, all this defendant's lands, properties, and franchises, present and prospective; which mortgage, to a large amount, still remains unpaid; but aver' that it has sold and disposed of and mortgaged the same
112 in the usual course of business only, and that the whole of the proceeds thereof have been and are being used only for the purpose of building and equipping its line of road; that this defendant is still the owner and in possession of its line of road, and that the value thereof has been increased to the full amount of such proceeds of said lands by the expenditure of such proceeds thereon; and this defendant denies that it is about to or designs to dispose of any of its lands or other properties, rights or franchises, unless in the usual course of business and for the full value thereof; and denies that it intends or designs to use any portion of the proceeds of any of its lands which it has sold, or may hereafter sell, other than in the usual course of business and for the purpose of building and equipping its line of road, which is not yet fully completed.

That this defendant denies that it is insolvent; but, on the contrary, avers that it is fully able and has ample property, means, and resources to pay and discharge its obligations in full and leave a large surplus; and that it is and will be fully able to account for the proceeds of any lands or other property which it has disposed of, or may hereaf-
113 ter dispose of, if ever required so to do. That this defendant admits that it has caused its lands to be appraised, and has offered the same for sale, and has organized a land department for the better management of its lands; but this defendant avers that it has not offered its lands, and is not offering the same, except in the usual course of business, for full value, and upon advantageous terms to this defendant.

And this defendant denies that it is offering or is about to sell or dispose of any securities held by it except for full value thereof, in the usual

course of business, and for the purpose of using the proceeds in the building and equipment of its said road.

And this defendants admits that it claims to be, and avers that it is, the absolute owner of all the rights, properties, and franchises to it by the said act of legislature of 1864 granted, and of all the lands which have been vested in it by virtue of said act of legislature and said act of Congress.

And this defendant alleges that no portion of the line of railway authorized by the said the Root River Valley and Southern Minnesota Railroad Company, or by the original, the Southern Minnesota Railroad Company, to be constructed, was located, or the particular or definite route thereof fixed, prior to the 21st d'y of July, 1857; and
114 that no lands appropriated by said act of Congress to aid in the line of railroad from La Crescent to a junction with the line from Winona westwardly were ever identified, located, or specifically set apart for such purposes until May 23, 1860, when certificate was made of a portion thereof by the Commissioner of the General Land-Office of the United States to the State of Minnesota, in the manner provided by the act of Congress entitled "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them," approved August 3, 1854.

And this defendant alleges that in the year 1859, and before any of the lands appropriated as aforesaid had been identified, located, or specifically set apart, or certified by the Land Commissioner of the United States, the said original the Southern Minnesota Railroad Company became insolvent and wholly unable to proceed with the construction of its line of railroad, and wholly unable to carry out any of the conditions of said act of Congress, or of the various acts of legislation of said Territory and State to it relating, and voluntarily abandoned
115 the construction of its road, and of all the works upon the same, and of the performance of any of the conditions by said various acts imposed upon it; and voluntarily abandoned all right and claim to have any of the lands by said act of Congress for its line *of* appropriated, and all the rights and franchises conferred upon it by the various acts of legislature to it relating, and wholly failed to complete any part or portion of its line of road; and that no further work was done upon said line of road until this defendant commenced operations thereon in the year 1865.

And this defendant alleges that this defendant acquired its corporate rights and franchises under and by virtue of said act of legislature, approved March 4, 1864, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto;" that in and by said act the State of Minnesota granted and conveyed unto this defendant, and unto its successors and assigns, all the rights, properties, and franchises by said State acquired from the original The Southern Minnesota Railroad Company in this answer before alleged by that act to have been granted
116 and conveyed to this defendant, and granted and transferred unto this defendant and unto its successors and assigns all the lands, interests, rights, powers, and privileges acquired by said State under said act of Congress of 1857, by said act of legislature in this answer before alleged to have been granted and conveyed to this defendant; that afterwards, and by deeds of conveyance bearing dates, respectively, on January 6, 1866, December 5, 1866, and April 16, 1867, the State of Minnesota in pursuance of said act of Congress of 1857, and of said act of legislature of 1864, conveyed unto this defendant, and unto its

successors and assigns, the lands described in Schedule B, to the plaintiff's bill annexed, absolutely and without exception or reservation.

And this defendant alleges that at the passage of the said act of legislature of 1864, the State of Minnesota was and purported to be seized and in possession, as absolute owner, free from all liens and incumbrances, of all the rights, properties, and franchises by it acquired from the original the Southern Minnesota Railroad Company and granted by such act; and was and purported to be seized of all the lands
117 described in Schedule B to the plaintiff's bill annexed, as the absolute owner thereof, subject only to the trusts annexed to the same by said act of Congress of 1857, and free from all liens and incumbrances; and was and purported to be seized absolutely of all the rights conferred by the act of Congress aforesaid, and that at the times of the execution of the said several conveyances of said lands in said schedule described, the said State was and purported to be seized of said lands, as the absolute owner thereof, free from all liens and encumbrances, and subject only to the rights in the same which this defendant had derived from said act of 1864, and the performance of the conditions thereof.

And this defendant alleges that all the grants in said act of legislature of 1864 contained were made upon the conditions and considerations in this answer before stated; that upon the passage of said act this defendant accepted the same and the grants therein contained, and in good faith, and without any notice, knowledge, information, suspicion, or reason to believe that the plaintiff or any other person or persons had or claimed to have liens upon any of the rights, properties,
118 or franchises, or upon any of the lands, interests, powers, and privileges aforesaid, undertook the performance of the conditions by said act upon this defendant imposed, and entered upon the construction of its line of railroad, and had fully completed and put into operation before the exhibition of plaintiff's bill the number of miles thereof in this answer before alleged; and had performed the conditions of said grants to the extent and in the manner in this answer before alleged; and in the construction of its road and in the performance of said conditions had expended the amounts of money in this answer before alleged.

And this defendant further alleges that all conveyances to it of lands have been made from time to time after the completion by this defendant of each section of its said railroad of the length of ten miles for the first, and of twenty miles for those succeeding, in pursuance of the said act of legislature of 1864, and of the various acts amendatory thereof; and that no lands have been conveyed to this defendant in advance of the construction of the section of this defendant's line of road to which such lands appertained.

119 And this defendant avers that it never had any notice of the existence or contents of the instrument of contract executed by the said original The Southern Minnesota Railroad Company to the State of Minnesota, set out at large in the plaintiff's bill, nor that the plaintiff nor any other person had or claimed to have any right to or lien or claim upon, legal or equitable, any of the lands aforesaid, or upon any of the rights, franchises, or properties aforesaid, until the exhibition of the plaintiff's bill.

And this defendant further alleges that the plaintiff in this action well knew of the passage of the act of legislature of 1864, entitled as aforesaid, and of the contents thereof, at the time of, or a short time after, its passage, and before this defendant had accepted the same or had entered upon the construction of its line of road, or had expended

any moneys upon the same, and well knew that the said State, at the passage of said act, was seized of all the rights, properties, and franchises which had ever belonged to the said original The Southern Minnesota Railroad Company, claiming to be the absolute owner of the same, free and clear from any lien, interest, or claim by or belonging to any other person or persons; and that said State was then seized of the lands in said Schedule B described, and of the
120 powers, rights, and interests upon it conferred by said act of Congress of 1857, claiming to be the absolute owner thereof, subject only to the trusts thereunto annexed by such act of Congress; and that plaintiff well knew of this defendant's acceptance of the grants, terms, and conditions of said act of legislature of 1864, at the time thereof; and that plaintiff well knew, during all the times when this defendant was engaged in the performance of the terms and conditions of said act, and in the construction of said line of road, and in the expenditure of the moneys aforesaid therefor, that this defendant was so engaged in such performance of said conditions, and in such construction of its line of road, and in such expenditure of moneys, and negligently and wilfully suffered and permitted this defendant to incur the obligations and make the expenditures aforesaid, well knowing that such expenditures were made and obligations incurred by this defendant under the belief that the title of said State to the rights, properties, franchises, and lands by said act to this defendant granted, at the passage of said act, was perfect, without notifying this defendant that he, the plaintiff, or any other person, claimed to have any rights in
121 or liens upon any of the lands, rights, properties, or franchises aforesaid, and never gave this defendant any notice that he, or any other person, made any claim to the same, nor to any part thereof, until the exhibition of this bill.

And this defendant further alleges that the plaintiff knew of the execution of the said several conveyances to this defendant of the lands aforesaid by the said State, at or about the times thereof, and that this defendant was offering to convey the same, or portions thereof, absolutely or by way of mortgage, and knew that this defendant did dispose of the same, or parts thereof, for the purpose of raising funds with which to build its road, but that the plaintiff never made any objection to any of the grants or conveyances aforesaid to this defendant, nor to any of the conveyances made as aforesaid by this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy.

Without this, that there is any other matter, cause, or thing in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby
122 well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

The Southern Minnesota Railroad Co., defendant.

[CORPORATE SEAL.] By BENJ. G. LENNOX, *Secretary.*

J. M. GILMAN,
Solicitor for Deft., Southern Minn. R. R. Co.

The answer of the defendant, the Southern Minnesota Railroad Com pany, was taken this 23d day of September, 1872, before me, under the

common seal of the said corporation, as by their said seal affixed appears.

H. E. MANN, *Clerk.*

123 And afterwards, to wit, on the first day of November, A. D. 1872, came the plaintiff, by his said solicitors, and filed in the clerk's office of said court his replication to the answer of the defendant The Southern Minnesota Railroad Company, which replication is in the words and figures following, viz:

124 In the circuit court of the United States for the district of Minnesota. In equity.

SELAH CHAMBERLAIN, PLAINTIFF,
agst.
THE ST. PAUL & SIOUX CITY RAILROAD COMpany & the Southern Minnesota Railroad Company.

The replication of Selah Chamberlain, plaintiff, to the answer of the Southern Minnesota Railroad Company, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto, saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays in and by his said bill he hath already prayed.

F. R. E. CORNELL, & GORDON E. COLE,
Solrs. & of Counsel for Plff.

125 And afterwards, to wit, on the fourth day of November, A. D. 1872, came the defendant, the Saint Paul & Sioux City Railroad Company, by E. C. Palmer, esq., its solicitor, and filed in the clerk's office of said court its answer to the plaintiff's bill of complaint, in the words and figures following, viz:

126 Circuit court of the United States, district of Minnesota. In equity.

SELAH CHAMBERLAIN
against
THE SAINT PAUL AND SIOUX CITY RAILROAD Company and The Southern Minnesota Railroad Company.

The separate answer of the defendant, the St. Paul and Sioux City Railroad Company, to the bill of complaint of Selah Chamberlain, plaintiff.

This defendant, now and at all times hereafter saving and reserving to itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections

in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answers and says:

That it admits that this defendant is a corporation, duly incorporated by and under the laws of the State of Minnesota, and established
127 and doing business in, and a citizen of, the State of Minnesota, and admits that on the 3d day of March, 1857, the Congress of the United States passed an act, approved on that day, entitled as in said complainant's said bill alleged, but denies that by said act the United States granted to the Territory of Minnesota any beneficial or present interest in any lands whatever, and denies that by the terms or provisions of said act the said Territory of Minnesota acquired any present or beneficial interest in any lands whatever. And this defendant admits that it was provided by said act of Congress that the lands in said act referred were to be disposed of only in the manner in folio numbered five (5) and the first six lines of folio numbered six (6) in said complainant's said bill alleged.

And admits that on the 23d day of May, 1857, the legislature of said Territory of Minnesota passed an act, approved on that day, entitled as in said complainant's said bill alleged, and that by such legislative act, the Root River Valley and Southern Minnesota Railroad Company, a corporation created, and with powers as in said bill of com-
128 plaint alleged, was authorized and empowered to survey, locate, and construct, and perpetually to have, use, and maintain and operate those certain lines of railroad in said bill alleged, but this defendant denies that by such act of the legislature the said Territory of Minnesota disposed of, passed to, or conferred upon the said Root River Valley and Southern Minnesota Railroad Company any present or beneficial interest, right, or title in or to any lands whatever, and denies that by the terms and provisions of said act of the legislature, the said The Root River Valley and Southern Minnesota Railroad Company acquired any present or beneficial interest, right, or title in or to any lands whatever.

And this defendant admits that on the 23d day of May, 1857, the legislature of said Territory of Minnesota changed the name of the said Root River Valley and Southern Minnesota Railroad Company, as in said bill of complaint alleged; and admits that by an amendment to the constitution of the State of Minnesota, adopted at the date in said bill of complaint alleged, provision was made for a loan to the
129 said corporation, for the purposes, in the manner, to the amount, and upon the terms in said bill alleged, of the credit of said State; and admits that on the 12th day of August, 1858, the legislature of said State of Minnesota passed an act, approved on that day, entitled "An act concerning land-grant railroads," wherein and whereby provision was made as in the said bill of complaint alleged; and admits on information and belief that afterwards, and prior to the issuance of any bonds under said constitutional amendment to the said Southern Minnesota Railroad Company, the Southern Minnesota Railroad Company, on the 15th day of October, 1858, executed and delivered to the governor of said State a conveyance to the State of Minnesota in the words and figures in said bill of complaint particularly set forth; and further admits that the said The Southern Minnesota Railroad Company, at or about the dates mentioned in said bill of complaint, undertook to execute to Benjamin Pringle and Andrew G. Chatfield an instrument similar to that in said bill mentioned; but whether the same was duly executed, or whether it was or is of the character or contents set forth in said

bill, this defendant has no knowledge or information save from
130 the allegations of the said bill. And this defendant denies that by either of the said instruments last herein referred to the said The Southern Minnesota Railroad Company could or did convey to the said State any right, title, or interest in or to any of the lands described therein.

And this defendant admits that said Southern Minnesota Railroad Company thereupon entered upon the construction of its said railroads, but whether it made any contract with said plaintiff, or whether said plaintiff ever did or caused to be done any grading or work upon said roads, or laid out or expended any moneys in causing any work to be done upon said roads, this defendant has no knowledge or information save from the allegations in said plaintiff's said bill of complaint; and this defendant denies that any number of continuous miles of road was graded or constructed by said company, or any one, but alleges that said company did not have or procure the right to take possession of or construct its said roads, or either of them, over, across, or upon any lands on the located line of said roads, but that as to the greater portion thereof, so far as any work was done or attempted to be done in
131 grading or constructing said roads, the said company, its agents, servants, and employees, were trespassers ab initio, and acquired, and said plaintiff, in consequence of any work done by him, acquired, no right to the delivery of any State bonds, or to any compensation for such grading or construction, to any extent or in any form whatever.

And this defendant admits that the governor of said State caused to be issued to the said company certain bonds of said State, of the description stated in said plaintiff's bill, but as to the number of said bonds, or the time or times when issued, or as to the evidence made or required to induce such issuance, this defendant hath no knowledge or information save from the allegations contained in said plaintiff's said bill; and as to whether said company at any time ever transferred the said State bonds, or any part thereof, to the said plaintiff, this defendant has no knowledge or information save from the allegations of said plaintiff's bill; and this defendant denies that said Southern Minnesota Railroad Company ever endorsed any of said bonds; and as to whether any of said bonds at any time had thereon the endorsement set forth in said plaintiff's said this defendant has no knowledge or informa-
132 tion save from the allegations of said bill.

And this defendant admits that said Southern Minnesota Railroad Company never made any payment of the interest on said State bonds, except as in said plaintiff's bill alleged, and made default in the payment of the interest on the first-mortgage bonds in said bill mentioned, and abandoned work on the said railroads, and that no work was afterwards done on said railroad by said company, and no more State bonds were thereafter issued to said company as in said plaintiff's said bill alleged. And that this defendant has been informed and believes that no part of the principal or interest of said State bonds has been paid, except as in said plaintiff's bill alleged, but denies, upon information and belief, that there is any sum whatever for interest or otherwise due to said complainant for or on account of any of the matters in his said bill set forth.

And this defendant admits that the governor of said State of Minnesota, having been in writing required so to do, duly caused the trust-deed in said plaintiff's bill set forth to be foreclosed, the lands, properties, rights, privileges, and franchises granted and conveyed in and
133 by said trust-deed to be exposed to sale at public auction, as in said

bill alleged, and did duly bid off and purchase the same for and in the name of said State of Minnesota, and did cause the necessary conveyances to effectuate said sale to be executed and filed, as in said bill alleged.

And this defendant admits that on the 4th day of March, 1864, the legislature of the State of Minnesota passed an act, approved on that day, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," by which all the rights, benefits, privileges, franchises, property, and interests of the said Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by said company before that time done or supposed, or by reason of any forfeiture, or by or under any law of said State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any part of the same, by the governor of said State, and a bidding and purchase by the governor of said State for the benefit of
134 said State pertaining to the line of road from St. Paul and St. Anthony via Minneapolis to a point of junction at Shakopee City, in the county of Scott, and thence to Belle Plaine, Clarksville, Le Sueur, Traverse de' Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and in the several acts amendatory thereof, were granted and transferred to certain persons in such act of the legislature named, and their associates and successors, together with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, had or might or could have had by reason of or under any acts of the legislature. And this defendant admits that by said act of 1864 this defendant was clothed and invested with its corporate rights and franchises, and acquired all
135 the interest which the State of Minnesota had acquired under and by virtue of the aforesaid act of Congress, appropriated to aid in the construction of a railroad from St. Paul and St. Anthony via Minneapolis to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Sueur, Traverse de' Sioux, St. Peters, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River. And this defendant admits that thereafterwards its name was lawfully changed from the Minnesota Valley Railroad Company to the St. Paul & Sioux City Railroad Company, as in said bill alleged, to which it makes answer under that name.

And this defendant admits that the State of Minnesota was at the date of said act of March 4, 1864, seized and possessed of the lands described in Schedule A, annexed to said bill of complaint, but denies that said State ever acquired any right or interest in or to said lands, or any part or parcel thereof, by virtue of any act, deed, or conveyance by the said Southern Minnesota Railroad Company done or suffered, or in any other man-
136 ner, save under and by virtue of the act of Congress aforesaid, and denies that the said Root River Valley and Southern Minnesota Railroad Company, or the said Southern Minnesota Railroad Company, was ever authorized to sell any of such lands, and denies that any of said

lands or any of the property, right, franchises, interests, or things granted by said act of the legislature of 1864, was ever held in trust or as a fund by said State, for the payment of any of said State bonds, or of any part of the principal or interest thereof; and as to whether at the time of the passage of said act of 1864, the said plaintiff was the owner of any of said State bonds, or, if owner of any, of how many, this defendant has no knowledge or information save from the allegations of said plaintiff's bill; and this defendant denies that said plaintiff ever had any right, claim, or equity to have any part of said bonds, or interest thereon, paid out of the property, rights, franchises, interests, or things, or the lands aforesaid; and denies that any of the rights, franchises, interests, or things, or the right and interest of said State in the lands aforesaid, granted to and
137 conferred upon this defendant by said act of the legislature, were, by that act, granted and conferred without consideration; but, on the contrary, this defendant avers that, by said act, it was expressly provided that this defendant should not acquire any title to the property, rights, franchises, interests, or things aforesaid, nor to any part thereof, until this defendant should fully complete and put in running order ten miles of said railroad; and it was further provided by said act that, upon the construction and completion of ten miles of said road, with the cars running thereon, the governor should certify the same to the Secretary of the Interior, and thereupon, and not before, this defendant might demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State might then be entitled to under the provisions of the act of Congress aforesaid, approved March 3, 1857; and that upon the construction and completion of each and every consecutive twenty miles of said railroad, the governor of said State of Minnesota, acting for and in behalf of said State, should, in the name of
138 said State of Minnesota, and under the great seal thereof, make conveyance of a full and absolute title in fee-simple to all the lands appertaining to such twenty miles of said road appropriated by said act of Congress as aforesaid, to aid in the construction of said road to this defendant; and it was further provided by said act of the legislature, that all the rights, privileges, franchises, road-bed, right of way, properties, and immunities granted and conferred by said act of the legislature, were so granted upon the express condition that this defendant should construct ten miles of its said road within two years from the twentieth day of January, A. D. 1864, and thirty miles of its said road within three years from said twentieth day of January, and construct and fully equip said road, and all the other portions of said road on the route in said act designated, and that upon failure of this defendant to keep and perform either or any of said conditions, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, should revert to said State, without any other act or ceremony whatever.

139 And that this defendant has met and complied with all and singular the requirements and conditions of said act, and of the acts of the legislature amendatory thereof, and in so doing has built, completed, equipped, furnished, maintained, and operated more than one hundred and twenty miles of its said road, and in such building, completion, equipment, furnishing, maintaining, and operating of its said road has necessarily and duly paid out and expended large sums of money, amounting in the aggregate to more than three millions of dollars.

And this defendant admits that the State of Minnesota cancelled all the bonds to the said State issued by the said original Southern Minnesota Railroad Company, as in said plaintiff's said bill alleged.

And this defendant admits that at the dates set forth in said plaintiff's bill the governor of the State of Minnesota conveyed to this defendant certain of the lands appropriated by said act of Congress to aid in the construction of the line of road built, equipped, and owned by this defendant, as in this answer before stated, and admits that said lands amounted in the aggregate to the number of acres in said
140 plaintiff's bill alleged, and alleges that the same embraced and comprised all the lands which the said State was authorized or entitled to dispose of under said act of Congress, to aid in the construction of this defendant's said line of road; but this defendant denies that any portion of said lands was ever vested in the said original Southern Minnesota Railroad Company, and denies that the said company was ever authorized to sell or dispose of the same or of any part of the same, and denies that the said conveyance to this defendant was without consideration, but avers that said conveyance was made in pursuance of and in obedience to the provisions of said act of the legislature of 1864; that prior to said conveyance this defendant had accepted the grants in said act of the legislature contained, and had accepted and undertaken to perform the obligations by said act imposed upon this defendant, and had entered upon the performance thereof in good faith, and with the purpose and design of performing and fulfilling all of said obligations, and had in fact fully built and completed more than
141 ten miles of its said road, and in such building and completion had properly and necessarily laid out and expended large sums of money, amounting in the aggregate to more than four hundred thousand dollars. And this defendant denies that at the date of the act of the legislature of 1864, or at the date of the conveyances thereof to this defendant, the said lands were of any greater average value than one dollar and twenty-five cents per acre; and denies that said lands are now of greater value than four dollars per acre; and denies that the rights, franchises, privileges, and graded road-bed granted to this defendant by act of the legislature aforesaid were of any value whatever. And this defendant denies that at or prior to the 4th day of March, 1864, or at or prior to the conveyance of said lands by the governor of said State of Minnesota to this defendant, or prior to the exhibition of the plaintiff's bill, this defendant had any knowledge or notice whatever that the said State of Minnesota held any of said lands upon any trust whatever, except the trusts created by the said act of Congress, and denies that at or prior to the dates aforesaid this defendant had any knowl-
142 edge or notice whatsoever that the said State held any of the properties, rights, franchises, or things by said act of 1864 to this defendant granted, upon any trust or manner of trust whatever; and denies that this defendant had any knowledge or notice whatsoever that said plaintiff or any holder or holders of any of the State bonds aforesaid had or claimed to have any right or equity in or to, or any claim or lien upon, any of the properties, rights, franchises, or things by said act of legislature to this defendant granted, or any of the lands aforesaid, for the payment of the principal or interest, or any part thereof, of the State bonds aforesaid; but, on the contrary, alleges that it accepted the said grant with the conditions thereto annexed in good faith, and entered on the performance of said conditions and obligations, and made full and due compliance therewith, in the full belief that said grants were free and clear of all right, equity, lien, or encumbrance of every kind, and that this defendant would obtain and become invested with a good title to said properties, rights, franchises, and things by said
143 act of 1864 granted, upon compliance with the conditions in and by said act imposed.

And this defendant in this behalf further alleges that, at and prior to the passage of said act of 4th March, 1864, and at and prior to the acceptance thereof by this defendant, the said plaintiff, Selah Chamberlain, then being interested in the construction and completion of one of the lines of road in said act of Congress designated, to wit, the branch via Faribault to the north line of the State of Iowa, west of range sixteen, which said branch line had been located and portions thereof graded, but on which all work had been abandoned, and then being in the State of Minnesota, for the purpose of devising some plan in connection with other parties similarly situated, whereby all said roads might be constructed and put in operation at an early day, did confer with the persons named in said act of 1864, as the grantees of the rights and privileges secondly therein conferred and now owned by this defendant, in reference to procuring the passage of said act, and did strongly advise and urge the passage thereof and the acceptance of the same by said persons, and gave full assurance that said State has
144 good right to make said grant free and clear of all claims, liens, rights, and equities of all persons whatsoever; and that upon complying with the conditions in said act contained, said grantees and their successors would obtain and acquire a perfect title to all and singular the properties, rights, franchises, and things by said act granted, including the lands aforesaid; and that said plaintiff did not claim to be entitled to any interest in or right to or lien upon any of said lands, or any of the property, rights, and franchises in said act embraced and designated as granted to the persons aforesaid. And this defendant alleges that said persons were influenced by said plaintiff's conduct and assurances, as stated aforesaid, to accept the said grants and to enter upon said undertaking, and did so accept the same relying in part upon said plaintiff's advice and assurances, and well knowing that said plaintiff had been engaged in grading portions of said branch line of road, and that he was and had been for many years a railroad-builder of large means and experience, whose advice and opinions on
145 railroad matters were entitled to great weight. And this defendant alleges that had said plaintiff then or subsequently, before this defendant had become liable to perform the obligations imposed by said act of 1864, and had incurred large expenditures thereabout, given any notice or made any claim that he was the owner and holder of a large number of said State bonds, received in payment for work done on the line of road now owned by this defendant, and that he was or would be entitled in consequence thereof to appropriate said lands or any part thereof to the payment of said bonds, or the interest thereon, this defendant would not have accepted said grants or complied with any of the conditions in said act imposed, or made any expenditure in or about the construction or completion of its said line of road. And this defendant avers that by reason of said acts, assurances, and omissions of said plaintiff, he is and ought to be estopped from claiming or asserting any right of equity or interest in or lien upon any of the said lands, or the proceeds thereof, or any part of said lands or proceeds.
146 And this defendant admits that it has entered into the possession and control of the lands, properties, and franchises granted and conveyed to it as aforesaid, and has built and is operating portions of its line of road as hereinbefore alleged, and admits that it has sold and disposed of portions of the lands conveyed to it as aforesaid to divers parties in fee, and has mortgaged in good faith, and upon valuable consideration, long prior to the exhibition of said plaintiff's bill, all this defendant's lands, properties, and franchises, present and prospective,

and that said mortgage still subsists and remains unpaid to a large amount; but this defendant alleges that all the lands sold and disposed of by it have been so sold and disposed of in due course of business and at fair prices, and the proceeds thereof have been and are being used for the purpose of completing its said line of road, and in paying just debts and expenses by it lawfully incurred in and about the construction equipping, and maintaining of the same.

And this defendant admits that it has caused its lands to be appraised, and has offered the same for sale from time to time, and has organized a land department for the due and orderly management
147 of said lands, but alleges that it has not offered its lands and is not offering the same except in the usual course of business for full value and upon advantageous terms to this defendant. And this defendant denies that it is offering, or is about to sell or dispose of, any securities held by it except for full value thereof, in the usual and ordinary course of business, and for the purpose of using the proceeds thereof in the construction and equipment of its said road.

And this defendant admits that it claims to be and avers that it is the absolute owner of all and singular the rights, properties, and franchises granted to it by said act of March, 4, 1864, and of all the lands which have been vested in it by or under said act of 1864 and said act of Congress.

And this defendant alleges that no portion of the line of railroad which the said Root River Valley and Southern Minnesota Railroad Company, or the said original Southern Minnesota Railroad Company, was authorized to construct was located on the particular or definite route thereof fixed prior to the 21st day of July, 1857, and that no lands appropriated by said act of Congress to aid in the construction of
148 the line of road from St. Paul and from St. Anthony via Minneapolis to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Seuer, Traverse de Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the Big Sioux River, were ever identified, located, or specifically set apart for such purposes until the twentieth day of May, 1860, when certificate was made of a portion thereof by the Commissioner of the General Land-Office of the United States in the manner provided by the act of Congress entitled "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them," approved August 3, 1854.

And this defendant alleges that in the year 1859, and before any of the lands appropriated as aforesaid had been identified, located, or specifically set apart or certified by the Land-Commissioner of the United States, the said original Southern Minnesota Railroad Company became and was insolvent and wholly unable to proceed with the construction of its line of railroad, and wholly unable to comply with any of
149 the conditions of said act of Congress or of the various acts of the legislature of said Territory and State of Minnesota relating to said company, and did there voluntarily abandon the construction of said road and cease all work upon the same, and did voluntarily abandon the performance of any of the conditions by said various acts imposed upon said company, and all right, claim, and equity to have any of the lands by said act of Congress appropriated for its line of road, and all the rights, franchises, and privileges conferred upon it by the various acts of legislation to it relating, and did entirely fail to complete any part or portion of its said road, and that no further work was done

upon said line of road lastly hereinbefore described until this defendant commenced actual work thereon in the year 1865.

And this defendant alleges that the greater portion of the work done by said company on the line of road lastly hereinbefore described, prior to said abandonment, had been done upon and across lands belonging to private persons, without right or license obtained from said owners therefor; that no right of way had been secured or paid for by said company, save in a few instances, on or over said last-named line of road, as the same was located, and no proceedings had been
150 taken or instituted for the purpose of acquiring said right of way or grounds for depot purposes, but that this defendant, wherever it has used any portion of the road-bed made and existing in its said line of road at the date of the act of 1864, , save in said few instances, been compelled to buy or condemn, and has purchased or condemned, the necessary right of way across the lands in which said road-bed was constructed, at an expense greatly exceeding the fair and just value thereof, and fully equal to the expense it would have incurred therefor, and for constructing a new road-bed, had no work been done on said located line by said company as aforesaid before the date of said act of 1864.

And this defendant alleges that it acquired its corporate rights and franchises under and by virtue of the said act of the legislature approved March 4, 1864, entitled "An act to facilitate the construction of the Southern Minnesota Railroad and to amend and continue certain acts in relation thereto;" that in and by said act said State of Minnesota granted and conveyed unto this defendant and unto its successor and assigns all the rights, property, and franchises by said State
151 a'quired from the original Southern Minnesota Railroad Company in this answer before alleged by that act to have been granted and conveyed to this defendant, and granted and transferred unto this defendant and unto its successors and assigns, all the lands, interests, rights, powers, and privileges acquired by said State under said act of Congress of March 3, 1857, by said act of legislature in this answer before alleged to have been granted and conveyed to this defendant; that afterwards, and by deeds of conveyance bearing dates respectively October 7, 1865, and January 5, 1866, the State of Minnesota, pursuant to said act of Congress of March 3, 1857, and of said act of legislature of 1864, conveyed unto this defendant, its successors and assigns, the lands described in Schedule A, to the plaintiff's bill annexed, absolutely and without exception or reservation; and this defendant alleges that at the passage of said act of legislature of 1864, the said State of Minnesota purported to be and was seized and in possession as absolute owner thereof, free from liens and incumbrances, of all and singular the rights, properties, and franchises by it acquired from the original Southern Minnesota Railroad Company and granted by said act, and pur-
152 ported to be and was seized of all the lands described in Schedule A, annexed to said plaintiff's bill, as the absolute owner thereof, subject only to the trusts annexed to the same by the said act of Congress of March 3, 1857, and free from all liens and encumbrances, and purported to be and was seized absolutely of all the rights conferred by the said act of Congress; and that at the times of the execution of the said several conveyances of said lands in said Schedule A described, to this defendant, the said State purported to be and was seized of said lands as the absolute owner thereof, free from all liens and encumbrances, and subject only to the rights in the same which this defendant had derived from and under said act of March 4, 1864, and the performance of the conditions therein and thereby imposed.

And this defendant all'ges that all the grants in said act of legislature of March 4, 1864, contained, were made upon the conditions and considerations in this answer before stated; that upon the passage of said act this defendant accepted the same and the grants therein contained, and in good faith and without any notice, knowledge, information,
153 suspicion, belief, or reason to believe or suspect that the plaintiff, or any other person or persons, had or claimed to have liens upon any of the rights, properties, or franchises, or upon any of the lands, interests, powers, and privileges aforesaid, undertook the performance of the conditions by said act on this defendant imposed, and entered upon the construction of its said line of railroad, and had fully completed and put into operation before the exhibition of said plaintiff's bill, the number of miles thereof in this answer before alleged, and had performed all the conditions by said act imposed, and in the construction and equipment of its said road, and in the performance of said conditions, had expended not less than three millions of dollars.

And this defendant further alleges that all conveyances to it of lands were made from time to time, after the completion by this defendant of each section of its said railroad of the length of ten miles for the first, and of twenty miles for those succeeding, pursuant to said act of legislature of March 4, 1864, and of the various acts amendatory thereof,
154 and that no lands have been conveyed to this defendant in advance of the construction of the proper portion of this defendant's said line of road to which said lands appertained. And that said State of Minnesota never sold or attempted to sell any of the lands by said act of Congress of March 3, 1857, appropriated to aid any of the lines of road therein, and in said plaintiff's bill set forth, in advance of the construction of any portion of said roads, or in any other manner than as set forth herein.

And this defendant further alleges that it never had any notice of the existence or contents of the instrument of contract and conveyance executed by the said original the Southern Minnesota Railroad Company, to the State of Minnesota, set out at large in said plaintiff's bill, nor that said plaintiff, or any other person, had or claimed to have any right to, or lien or claim upon, legal or equitable, any of the lands aforesaid, or upon any of the rights, franchises, or properties aforesaid, until the exhibition of said plaintiff's said bill.

And this defendant further alleges that said plaintiff well knew of the passage of said act of legislature of March 4, 1864, entitled as aforesaid, and of the contents thereof, at the time of its passage,
155 and urged and advised the passage thereof, claiming and asserting that in no other way could said roads be built and completed and said State be enabled, through such building and completion, and the more speedy increase of population and greater development of the natural wealth and resources of the State which would be sure to accompany and follow such building and completion, to raise means sufficient to pay the said State bonds, or the interest thereon, to the payment of which the faith and credit of the State had been pledged. And said plaintiff well knew of the exact condition of said State bonds and all the facts connected therewith, and of the temper and tone of the public mind in regard to the recognition and payment of the same, and well knew who owned and held the greater portion of the same, and without disclosing to this defendant or the persons named as grantees in said legistative act of 1864, or any of them, that he held any of said bonds, or intended to claim, or would thereafter claim, that they constituted a lien upon any of the rights, franchises, or prop-

erties granted in said last-named act to this defendant, or upon
156 any of the said lands, he, the said plaintiff, then being present in St. Paul, where said legislature was held, and in frequent consultation with said grantees, their associates and successors, did advise them to accept said grants and incur the obligations thereby imposed, and did *and* then repeatedly assure them that by so doing and by performing the said conditions and obligations they would acquire a good and perfect title to all and singular said lands, rights, franchises, properties, immunities, and things set forth and granted in said act of 1864; that said persons relied upon said advice and assurances of said plaintiff, believing them to be made in good faith and with an honest purpose, and so believing accepted said grants, and assumed and undertook the performance of the obligations imposed by said act of 1864, and they and their associates and successors became incorporated with the name and style as in said act provided; that said plaintiff well knew of such acceptance at the time thereof and well knew that this defendant immediately thereupon entered on the construction of its said line of
157 road, and expended large sums of money thereabout, and well knew during all the time said defendant was engaged in the performance of the terms and conditions of said act and in the construction of its said line of road and in the expenditure of the said moneys therefor, that this defendant was so engaged in such performance of said conditions and in the construction of its said line of road and in the expenditure of moneys thereabout, and negligently and wil'fully suffered and permitted this defendant to incur said obligations and make such expenditures, well knowing that such expenditures were made and said obligations incurred by this defendant in reliance upon the advice and assurances of said plaintiff, so made as aforesaid, and under the full belief that the title of and to said lands would become lawfully vested in this defendant upon the performance of the conditions by said act imposed, and the conveyance thereof by the State as in said act provided, free and clear of all lien, claim, equity, or incumbrance whatever; and said plaintiff did not at any time give any notice or intimation to this defendant that he, said plaintiff, or any one, claimed to have
158 any rights in or liens upon any of said lands, or of the rights, properties, or franchises aforesaid, until the exhibition of his said bill.

And this defendant further alleges that prior to, at the date of, and subsequent to the passage of the act of legislature of March 4, 1864, said plaintiff well knew that said State was seized of all the rights, properties, and franchises which had ever belonged to the said original The Southern Minnesota Railroad Company, claiming to be the absolute owner thereof, free and clear from any liens, interests, claims, and equities, by or belonging to any other person or persons, corporation or corporations, and that said State was then seized of the lands in said Schedule A described, and of the powers, rights, and interests conferred by said act of Congress of 1857, claiming to be the absolute owner thereof, subject only to the trusts thereunto annexed by said act of Congress, and well knew that this defendant believed said State was so seized, and that it would vest a perfect title to the same in this defendant upon the performance of the conditions imposed by said act
159 of 1864, as stated aforesaid, and well knew of the execution of the said several conveyances to this defendant of the lands aforesaid, by the said State, at or about the times thereof, and knew that this defendant was offering to convey the same, or portions thereof, absolutely or by way of mortgages, and knew that this defendant did dispose of the

same or parts thereof, for the purpose of raising money with which to build its said road, but that said plaintiff never denied the title of said State to said lands, properties, rights, and franchises, as stated aforesaid, but on the contrary affirmed the validity thereof and never made any objection to any of the grants or conveyances aforesaid to this defendant, nor to any of the conveyances made as aforesaid by this defendant, nor to any of its acts and doings in and about the raising and application and expenditure of moneys raised and expended as set forth herein.

And this defendant further alleges that prior to making any expenditures in and about the construction of its said line of road, and prior to entering upon the performance of any of the obligations imposed upon it by said act of 1864, it submitted all the facts of the case
160 to reputable counsel, then and now resident and practicing in the State of Minnesota, and who were familiar with all the legislation bearing upon the subject, and learned in the law, and who made careful and elaborate examination of the whole subject, and particularly as to the rights, properties, franchises, and immunities granted to this defendant by said act of 1864, and as to the title it would acquire to said lands upon due performance of the conditions imposed by said act; and that after such examination said counsel gave their professional opinion to this defendant that, upon due performance of said conditions, and conveyance by said State of said lands, as in said act provided, to this defendant, it would acquire and become invested with a perfect title thereto in fee, free and clear from all rights, interests, equities, liens, or incumbrances whatever, and would acquire all the properties, rights, franchises, and immunities granted by said act of 1864, free and clear of any claim, right, interest, or equity of or on the part of the said original The Southern Minnesota Railroad Company, and of
161 any other corporation, person, or persons whatever; which advice and opinion this defendant believed to be true, and went forward in good faith and in the full belief and confidence that said opinion was correct, and that no person or corporation had or could have any right, title, claim, lien, or equity in, to, or upon any of the grants, properties, franchises, and lands or any part of the same vested in this defendant by and under the provisions of the said act of March 4, 1864, and thereafter performed its said obligations, built, equipped, and maintained its said line of road in the manner and at the expenditure of the moneys hereinbefore stated.

And this defendant denies all and all manner of unlawful combination and conspiracy; without this, that there is any other matter, cause, or thing in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; and which
162 matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

The St. Paul and Sioux City Railroad Company, defendant,
[CORPORATE SEAL.] By ELIAS F. DRAKE, *President.*

E. C. PALMER,
Solicitor for the Deft. The St. Paul & Sioux City Railroad Company.

The answer of the defendant The St. Paul and Sioux City Railroad Company, was taken this 4th day of November, A. D. 1872, before me,

under the common seal of the said corporation, as by its said seal affixed appears.

H. E. MANN, *Clerk.*

163 And afterwards, to wit, on the 20th day of November, A. D. 1872, came the said plaintiff, by his said solicitors, and filed in the clerk's office of said court certain proposed amendments to his bill of complaint, with petition attached and admission of service endorsed, which amendments, petition, and admission of service are in the words and figures following, to wit:

164 In the circuit court of the United States, district of Minnesota.

SELAH CHAMBERLAIN, PLFF.,
agst.
THE ST. PAUL & SIOUX CITY RAILROAD CO. and The Southern Minnesota Railroad Co.

Amendment of bill.

1st. After the word "Minnesota" in the sixth line of the 2nd folio of the original bill of complaint insert the names of the following additional parties: "Samuel B. Ruggles, and Albon P. Man, of the city and county of New York, Charles Scheffer and William R. Marshall, citizens of the State of Minnesota, Thomas A. Scott, of the city of Philadelphia, and State of Pennsylvania, Horace D. Hull, of the city of Boston, and State of Massachusetts, and George I. Seney and John A. Stewart, both of the city, county, and State of New York."

2nd. After the word "aforesaid" in the 4th line from the bottom of folio 115 of the original bill, insert the following:

"And your orator further avers that since the said conveyances from the State to the said Southern Minnesota Railroad Company, and while your orator's equities and those of the other holders of said Minnesota State Railroad bonds, in said lands, graded road-beds, and

165 franchises, were subsisting and valid trusts in and to the same, the said defendant, the Southern Minnesota Railroad Company, has issued and sold in the market large quantities and amounts of its bonds and land-certificates, which have passed into the hands of a great number of parties whose names and places of residence are to your orator unknown, and as security therefor has executed divers mortgages and trust-deeds of all its lands, roads, and franchises to the defendants, Samuel B. Ruggles and Albon P. Man, who are not citizens or inhabitants or found in the State, but reside and are citizens in the city and State of New York, who hold the same as trustees for the holders of said bonds and certificates; and your orator avers that prior to the issue of any such bonds or certificates, and prior to the execution of any such mortgages or trust-deeds, or the advancement of any money or other valuable consideration on the faith thereof, the said defendants, Ruggles and Mann, had full knowledge and notice of the equities and rights of your orator and the other holders of said State bonds, and that the same were and had been held by the State of Minnesota as a trust-fund for the payment of the same and had been transferred

166 by said State to said company in violation of such trust, and as to what extent, if any, said defendants or any person whom they represent advanced any money or other valuable consideration on the security of said mortgages and trust-deeds, your orator is ignorant.

And your orator further shows that the defendant The St. Paul and Sioux City Railroad Company, both in its present name, and in its former name of the Minnesota Valley Railroad Company, has likewise since the said act of 1864, and the conveyances by the governor of said State

pursuant to said act, issued a large amount of its bonds and evidences of indebtedness, and executed divers mortgages and trust-deeds on all its lands, graded road-beds, and franchises as security therefor; that a large number, but of the exact number and amount of said bonds your orator is ignorant, have been sold and disposed of in the market to a large number of persons whose names and places of residence your orator is ignorant; that said mortgages and trust-deeds were executed to and are now held by the various other defendants hereinbefore named as trustees for the holders of said bonds, to wit: Thomas A. Scott, of the city of Philadelphia, in the State of Pennsylvania; Horace D. Hull,
167 of the city of Boston and State of Massachusetts; George I. Seney and John A. Stewart, of the city and State of New York; that none of said parties are inhabitants of this district or can be found therein; also Charles Scheffer and William R. Marshall, who are citizens of this district. That prior to and at the time of the execution and delivery of each and every of said mortgages and trust-deeds, and to the advancement of any money or other consideration therefor, said trustees, and each and every of them, had full notice and knowledge of the equities and rights of your orator and the other holders of said State bonds in and to said lands, graded road-beds, and franchises, and that the State of Minnesota held the same in trust and as a fund for the payment of said State bonds, and had conveyed the same to said railroad company in violation of said trust. That said mortgages and trust-deeds conveyed to said defendants a large amount of other lands and property upon which your orator has no claim sufficient in value to pay all of said bonds and land-certificates issued by said company.

Wherefore your orator prays that said defendants, except said Scheffer and Marshall, may be brought into court by order
168 as by the statute in such case made and provided, and that as to said Scheffer and Marshall, your honors may grant unto your orator the most gracious writ of subpœna to be directed to the said Scheffer and Marshall, commanding them to be and appear before this honorable court at a certain day therein to be specified, to answer to all and singular the premises, and that their rights, title, and interest, if any, and those of the bond and certificate holders whom they represent, be adjudged subject and subsequent to the equities of your orator and the other holders of the said State bonds, and that a trust in all of said lands, road-beds, and franchises described in said original bill may be adjudged in favor of your orator and against said defendants, and said lands, road-beds, and franchises be sold, discharged of the lien of the said trust-deeds and mortgages, and the proceeds applied to the payment of your orator as in the original bill of complaint prayed.

G. E. COLE &
F. R. E. CORNELL,
Solrs. & of Counsel for Plff.

169 In circuit court of the United States, district of Minnesota.

SELAH CHAMBERLAIN, PLFF.,
agst.
THE SOUTHERN MINNESOTA RAILROAD COMPANY and The St. Paul & Sioux City Railroad Company.

To the judges of the circuit court of the United States for the district of Minnesota.

The humble petition of the plaintiff showeth:

That your petitioner filed his bill in this honorable court on the 17th

day of June, 1873, to which the defendants have appeared and put in their answer, upon which your petitioner is advised to make Samuel B. Ruggles, Albon P. Man, Charles Scheffer, William R. Marshall, Thomas A. Scott, Horace D. Hull, George I. Seney, and John A. Stewart parties in this cause, and to bring them before the court as defendants in the suit.

Your petitioner therefore prays that he may have leave to amend his bill by adding said persons defendants thereto with apt words to charge them; and your petitioner will ever pray.

170 Dated November 6th, 1872.

G. E. COLE &
F. R. E. CORNELL,
Solrs. & of Counsel for Plff.

To John M. Gilman, esqr., solr. & of counsel for the defendant The Southern Minnesota Railroad Company, and Messrs. Brisbin & Palmer, solrs. & of counsel for the defendant The St. Paul & Sioux City Railroad Company:

Take notice that on the 20th day of November, 1872, the above and foregoing petition will be presented to honorable R. R. Nelson, one of the judges of said court, at his chambers at St. Paul, in said district, at two o'clock of that day.

G. E. COLE &
F. R. E. CORNELL,
Solrs. & of Counsel for Plff.

Dated Nov. 6, 1872.

171 (Indorsed:) U. S. circuit court, dist. Minnesota. Amt. to bill, and petition & notice.

Due service of the within admitted this 13th day of November, 1872.

J. M. GILMAN,
Solr. & of Counsel for S. M. R. R. Co.
E. C. PALMER,
Solr. & of Counsel for St. P. & S. C. R. R. Co.

Filed November 20, 1872. H. E. Mann, clerk. G. E. Cole & F. R. E. Cornell, solrs. & of counsel for plff.

172 And afterwards, to wit, on the 21st day of November, A. D. 1872, at chambers before the Hon. Rensselaer R. Nelson, one of the judges of said court, the following proceeding was had, viz:

173 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
agst.
THE ST. PAUL AND SIOUX CITY RAILROAD Company & The Southern Minnesota Railroad Company.

On reading and filing the proposed amendment of the bill in the above-entitled cause, and the petition and notice, and admissions of due service thereof, by defendants' solicitors, and the defendant The Southern Minnesota Railroad Company not appearing to oppose, and after hearing Gordon E. Cole, eqr., in support of the motion to amend by adding

new parties, and E. C. Palmer, eqr., in opposition thereto on behalf of the St. Paul & Sioux City Railroad Company, it is ordered that Samuel B. Ruggles and Albon P. Man, of the city and county and State of New York, and Thomas A. Scott, of the city of Philadelphia and State of Pennsylvania, Horace D. Hull, of the city of Boston and State of Massachusetts, and George I. Seney and John A. Stewart, of the city and county and State of New York, and Charles Scheffer and William R. Marshall, of the district of Minnesota, be, and they hereby are, made parties to this action, and that the proposed amendment to said
174 original bill be allowed and filed as a part of said original bill; and this action, being a suit in equity to enforce an equitable lien, trust, and claim against the lands, road-beds, and franchises described in said bill, which are situate in this district, and all of said new parties-defendant, except said Scheffer and Marshall, not being inhabitants of or found within this district, and not voluntarily appearing in said action, it is further ordered that all of said defendants, except said Scheffer and Marshall, to wit, Samuel B. Ruggles, Albon P. Man, Thomas A. Scott, Horace D. Hull, George I. Seney, and John A. Stewart, do appear and plead, answer, or demur to the said complainant's bill, on the second Monday of February, A. D. 1873, and that the said complainant do cause this order to be served on each of said defendants, whenever found, if practicable, at least thirty days before said day, but if it shall be found impracticable to make such service upon any of said defendants, then that he do cause this order to be published for six successive weeks, at least once in each week, in the St. Paul Pioneer, a newspaper printed and published in the city of St. Paul, in said district, prior to said day so fixed for the appearance
175 of said defendants, and that the usual writ of subpœna do issue to bring in said defendants Scheffer and Marshall.

Done at my chambers, St. Paul, Nov. 21, 1872.

R. R. NELSON, *Judge.*

176 And thereupon a writ of subpœna was duly issued out of said court, pursuant to said order, which subpœna was duly tested, and was, with the indorsements of the marshal of said district thereon, in the words and figures following, viz:

177 UNITED STATES OF AMERICA,
District of Minnesota, ss:

The President of the United States of America to Charles Scheffer and William R. Marshall, greeting:

You are hereby commanded to appear before our judges of our circuit court of the United States of America for the district of Minnesota, at St. Paul, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Selah Chamberlain against The Southern Minnesota Railroad Company and The St. Paul and Sioux City Railroad Company, heretofore filed in the clerk's office of said court, and to which bill you have been made parties, by order of said court, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Minnesota to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, aforesaid, this twenty-first day of November, in the year of our Lord one thousand eight

hundred and seventy-two, and of our Independence the ninety-seventh year.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Saint Paul aforesaid, on or before the day to which this writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

H. E. MANN, *Clerk.*

GORDON E. COLE,
And F. R. E. CORNELL,
Plaintiffs' Solicitors.

178 DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within writ on the within-named Charles Scheffer, and Wm. R. Marshall personally, at St. Paul in said district, Nov. 21, 1872.

AUG. ARMSTRONG,
U. S. Marshal,
By J. R. CLEVELAND, *Dep'y.*

Fees, $4.12.

And afterwards, to wit, on the 26th day of November, A. D. 1872, came the said plaintiff and filed in the clerk's office of said court his replication to the answer of the Saint Paul and Sioux City Railroad Company, in the words and figures following, viz:

179 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL AND SIOUX CITY RAILROAD Company & The Southern Minnesota Railroad Company.

The replication of Selah Chamberlain, plaintiff, to the separate answer of the Saint Paul & Sioux City Railroad Company, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this affiant is willing and ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

G. E. COLE,
F. R. E. CORNELL,
Solicitors & of Counsel for Plaintiff.

180 And afterwards, to wit, on the 20th day of December, 1872, the marshal of said district returned into the clerk's office of said

court, three certified copies of the order allowing the plaintiff to amend his bill, which certified copies, with the marshal's returns of service thereon endorsed, are in the words and figures following, viz:

181 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL AND SIOUX CITY RAILROAD Company and the Southern Minnesota Railroad Company.

On reading and filing the proposed amendment of the bill in the above-entitled action, and the petition and notice and admissions of service thereof by defendants' solicitors, and the defendant the Southern Minnesota Railroad Company not appearing to oppose, and after hearing Gordon E. Cole, esq., in support of the motion to amend by adding new parties, and E. C. Palmer, in opposition thereto, on behalf of the Saint Paul and Sioux City Railroad Company: It is ordered that Samuel B. Ruggles and Albon P. Man, of the city, county, and State of New York, and Thomas A. Scott, of the city of Philadelphia and State of Pennsylvania, Horace D. Hull, of the city of Boston and State of Massachusetts, and George I. Seney and John A. Stewart, of the city and county and State of New York, and Charles Sheffer and William R. Marshall, of the district of Minnesota, be, and they hereby are, made parties to this action; and that the proposed amendment to said original bill be allowed and filed as a part of said original bill; and this action being a suit in equity to enforce an equitable lien, trust, and claim against the lands, road-bed, and franchises described in said
182 bill, which are situate in this district, and all of said new parties, defendants, except said Sheffer & Marshall, not being inhabitants of or found within this district, and not voluntarily appearing in said action, it is further ordered that all of said defendants, except said Scheffer and Marshall, to wit, Samuel B. Ruggles, Albon P. Man, Thomas A. Scott, Horace D. Hull, George I. Seney, and John A. Stewart, do appear and plead, answer, or demur to the said complainant's bill, on the second Monday of February, A. D. 1873, and that the said complainant do cause this order to be served on such of said defendants, wherever found, if practicable, at least thirty days before said day; but if it shall be found impracticable to make such service upon any of said defendants, then that he do cause this order to be published for six successive weeks, at least once in each week, in the Saint Paul Pioneer, a newspaper printed and published in the city of Saint Paul, in said district, prior to said day so fixed for the appearance of said defendants, and that the usual writ of subpœna do issue to bring in said defendants, Sheffer & Marshall.

Done at my chambers, St. Paul, Nov. 21, 1872.

R. R. NELSON, *Judge.*

DISTRICT OF MINNESOTA, *ss:*

I, H. E. Mann, clerk of the United States circuit court for the district of Minnesota, do hereby certify that I have carefully com-
183 pared the foregoing copy order with an original order made in the foregoing-entitled cause this day, and on file and of record in my office, and that such copy is a true and correct transcript of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at St. Paul, in said district, this 21st day of November, 1872.

[SEAL.] H. E. MANN, *Clerk.*

DIST. OF MINNESOTA, *ss:*

I hereby authorize and empower J. Edwards Hermon to serve the within writ.

St. Paul, Nov. 21, 1872.

AUG. ARMSTRONG, *U. S. Marshal.*

I hereby certify that I served the within order on the within-named Horace D. Hull, personally, at Boston, Mass., 10.45 a. m. twenty-ninth day of November, 1872.

AUG. ARMSTRONG, *U. S. Marshal,*
By J. EDWARDS HERMAN,
Special Deputy.

For fees see No. 1.

184 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL AND SIOUX CITY RAILROAD Company and The Southern Minnesota Railroad Company.

On reading and filing the proposed amendment to the bill in the above-entitled cause, and notice and admissions of service thereof by defendants' solicitors, and the defendant The Southern Minnesota Railroad Company not appearing to oppose, and after hearing Gordon E. Cole, esq., in support of the motion to amend by adding new parties, and E. C. Palmer, esq., in opposition thereto, in behalf of the Saint Paul & Sioux City Railroad Company: It is ordered that Samuel B. Ruggles and Albon P. Man, of the city and county and State of New York, and Thomas A. Scott, of the city of Philadelphia and State of Pennsylvania, Horace D. Hull, of the city of Boston and State of Massachusetts, and George I. Seney and John A. Stewart, of the city and county and State of New York, and Charles Shiffer and William R. Marshall, of the district of Minnesota, be, and they hereby are, made parties to this action, and that the proposed amendment to said original bill be allowed and filed as part of said original bill; and, this action being a suit in equity to enforce an equitable lien, trust, and claim against the lands, road-bed, and franchises described in said bill, which are situate in this district, and
185 all of said new parties-defendant, except said Sheffer and Marshall, not being inhabitants of or found in this district, and not voluntarily appearing in said action, it is further ordered that all of said defendants, except said Sheffer and Marshal, to wit, Samuel B. Ruggles, Albon P. Man, Thomas A. Scott, Horace D. Hull, George I. Seney, and John A. Stewart, do appear and plead, answer, or demur to the said complainant's bill on the second Monday of February, A. D. 1873, and that the said complainant do cause this order to be served on each of said defendants wherever found, if practicable, at least thirty days before said day, but if it shall be found impracticable to make such service upon any of said defendants, then that he do cause this order to be published for six successive weeks, at least once in each week, in the Saint

Paul Pioneer, a newspaper printed and published in the city of Saint Paul, in said district, prior to said day so fixed for the appearance of said defendants, and that the usual writ of subpœna do issue to bring in said defendants Sheffer and Marshall.

Done at my chambers, St. Paul, November 21, 1872.

R. R. NELSON, *Judge.*

DISTRICT OF MINNESOTA, *ss:*

I, H. E. Mann, clerk of said United States circuit court for the district of Minnesota, do hereby certify that I have carefully compared the foregoing copy order with an original order made in the fore-
186 going-entitled cause this day, and on file and of record in my office, and that such copy is a true and correct transcript of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of November, A. D. 1872, at St. Paul, in said district.

[SEAL.] H. E. MANN, *Clerk.*

DISTRICT OF MINNESOTA, *ss:*

I hereby authorize and empower Jas. W. Prince, of New York, to serve the within writ.

St. Paul, Nov. 21, 1872.

AUG. ARMSTRONG,
U. S. Marshal.

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that I served the within order on the within-named Albon P. Man, Geo. L. Seney, and John A. Stewart, personally, at the city of New York, Nov. 25, 1872, and I do further certify that I served the same on Samuel B. Ruggles, personally, at the city of New York, Dec. 10, 1872.

AUG. ARMSTRONG,
U. S. Marshal,
By JAS. W. PRINCE,
Special Deputy.

Service, $12.00; R. R. fare, 79.00; exp. 24.00—$115.

187 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD COMPANY and The Southern Minnesota Railroad Company.

On reading and filing the proposed amendment of the bill in the above-entitled cause, and the petition and notice, and admission of service thereof, by defendant's solicitors, and the defendant The Southern Minnesota Railroad Company not appearing to oppose, and after hearing Gordon E. Cole, esq., in support of the motion to amend by adding new parties, and E. C. Palmer, esq., in opposition thereto on behalf of the Saint Paul and Sioux City Railroad Company, it is ordered that Samuel B. Ruggles and Albon P. Man, of the city and county and State of New York, and Thomas A. Scott, of the city of Philadelphia and State Pennsylvania, Horace D. Hull, of the city of Boston and State of Massa-

chusetts, and George I. Seney and John A. Stewart, of the city and county and State of New York, and Charles Sheffer and William R. Marshall, of the district of Minnesota, be, and they hereby are, made parties to this action, and that the proposed amendment to said original bill be allowed and filed as a part of said original bill; and this action being a suit in equity to enforce an equitable lien-trust and claim against the lands, road-
188 bed, and franchises described in said bill, which are situate in this district, and all of said new parties defendants except said Sheffer & Marshall not being inhabitants of or found within this district, and not voluntarily appearing in said action, it is further ordered that all of said defendants except said Sheffer and Marshall, to wit, Samuel B. Ruggles, Albon P. Man, Thomas A. Scott, Horace D. Hull, George I. Seney, and John A. Stewart, do appear and plead, answer, or demur to the said complainant's bill on the second Monday of February, A. D. 1873, and that the said complainant do cause this order to be served on each of said defendants, whenever found, if practicable, at least 30 days before said day; but if it shall be found impracticable to make such service upon any of said defendants, then that he do cause this order to be published for six successive weeks, at least once in each week, in the Saint Paul Pioneer, a newspaper printed and published in the city of Saint Paul, in said district, prior to said day so fixed for the appearance of said defendants, and that the usual writ of subpœna do issue to bring in said defendants Sheffer and Marshall.

Done at my chambers, St. Paul, Nov. 21, 1872.

R. R. NELSON, *Judge.*

DISTRICT OF MINNESOTA, *ss:*

I, H. E. Mann, clerk of the United States circuit court for the district of Minnesota, do hereby certify that I have carefully compared
189 the foregoing copy-order with an original order made in the foregoing-entitled cause this day and on file and of record in my office, and that such copy is a true and correct transcript of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of November, 1872, at St. Paul, in said district.

[SEAL.] H. E. MANN, *Clerk.*

DISTRICT OF MINNESOTA, *ss:*

I hereby authorize and empower Lewis Ladomus, of Philadelphia, to serve the within writ.

AUG. ARMSTRONG,
U. S. Marshal.

ST. PAUL, *Nov.* 21, 1872.

I hereby certify that I served the within order on Thomas A. Scott personally, at Philadelphia, in the State of Pennsylvania.

Dec. 3, 1872.

AUG. ARMSTRONG,
U. S. Marshal,
By LEWIS LADOMUS,
Special Deputy.

190 And afterwards, to wit, on the 17th day of February, A. D. 1873, came the defendants Charles Scheffer, Thomas A. Scott, Wm. R. Marshall, and Horace D. Hull, by E. C. Palmer, esq., and

Messrs. Gilfillan & Williams, their solicitors, and filed in the clerk's office of said court their answer to the plaintiff's bill of complaint, in the words and figures following, viz:

191 Circuit court of the United States, district of Minnesota. In equity.

SELAH CHAMBERLAIN
against
THE SAINT PAUL AND SIOUX CITY RAILROAD Company & The Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon P. Man, Charles Scheffer, Thomas A. Scott, William R. Marshall, Horace D. Hull, George I. Seney, and John A. Stewart.

Charles Scheffer, Thomas A. Scott, and William R. Marshall, above-named defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is material or necessary for them to make answer unto, answer and say:

That they admit that the Southern Minnesota Railroad Company, defendant, is a corporation duly incorporated by and under the laws
192 of the State of Minnesota, and established and doing business in and a citizen of the State of Minnesota, and admits the citizenship of the other defendants named in said bill as amended, as therein alleged, and that the St. Paul and Sioux City Railroad Company is a corporation as therein alleged, and admits that on the 3d day of March, 1857, the Congress of the United States passed an act, approved on that day, entitled as in said complainant's said bill alleged, but denies that by said act the United States granted to the Territory of Minnesota any beneficial or present interest in any lands whatever, and denies that by the terms or provisions of said act the said Territory of Minnesota acquired any present or beneficial interest in any lands whatever. And these defendants admit that it was provided by said act of Congress that the lands in said act referred to were to be disposed of only in the manner in folio numbered five (5) and the first six lines of folio numbered six (6) in said complainant's said bill alleged; and admit that on the 23d day of May, 1857, the legislature of said Territory of Minnesota passed an act, approved on that day, entitled as in said complainant's said bill alleged, and that by such legislative act the Root River
193 Valley and Southern Minnesota Railroad Company, a corporation created and with powers as in said bill of complaint alleged, was authorized and empowered to survey, locate, and construct, and perpetually to have, use, and maintain and operate those certain lines of railroad in said bill alleged, but these defendants deny that by such act of the legislature the said Territory of Minnesota disposed of, passed to, or conferred upon the said Root River Valley and Southern Minnesota Railroad Company any present or beneficial interest, right, or title in or to any lands whatever, and deny that by the terms and provisions of said act of the said legislature the said The Root River Valley and Southern Minnesota Railroad Company acquired any present or beneficial interest, right, or title in or to any lands whatever.

And these defendants admit that, on the 23d day of May, 1857, the legislature of said Territory of Minnesota changed the name of the said Root River and Southern Minnesota Railroad Company, as in said bill of complaint alleged. And admits that, by an amendment to the constitution of the State of Minnesota, adopted at the date in said
194 bill of complaint alleged, provision was made for a loan to the said corporation, for the purposes, in the manner, to the amount, and upon the terms in said bill alleged, of the credit of said State. And admits that, on the 12th day of August, 1858, the legislature of the said State of Minnesota passed an act, approved on that day, entitled "An act concerning land-grant railroads," wherein and whereby provision was made as in the said bill of complaint alleged; and admits, on information and belief, that afterwards, and prior to the issuance of any bonds under said constitutional amendment to the said Southern Minnesota Railroad Company, the Southern Minnesota Railroad Company, on the 15th day of October, 1858, executed and delivered to the governor of said State a conveyance to the State of Minnesota, in the words and figures in said bill of complaint particularly set forth.

And further admit that the said The Southern Minnesota Railroad Company, at or about the dates mentioned in said bill of complaint, undertook to execute to Benjamin Pringle and Andrew G. Chatfield, an instrument similar to that in said bill mentioned, but whether the same was duly executed, or whether it was or is of the character or
195 contents set forth in said bill, these defendants have no knowledge or information save from the allegations of the said bill. And these defendants deny that by either of said instruments last herein referred to the said Southern Minnesota Railroad Company could or did convey to the said State any right, title, or interest, in or to any of the lands described therein.

And these defendants admit that said Southern Minnesota Railroad Company thereupon entered upon the construction of its said railroads, but whether it made any contract with said plaintiff, or whether said plaintiff ever did or caused to be done any grading or work upon said roads, or laid out or expended any moneys in causing any work to be done upon said roads, these defendants have no knowledge or information save from the allegations in said plaintiff's said bill of complaint; and these defendants deny that any number of continuous miles of road was graded or constructed by said company or any one, but alleges that said company did not have or procure the right to take possession of or construct its said roads or either of them over, across, or upon any lands on the located lines of said roads, but that as to the greater portion thereof, so far as any work was done or attempted to be
196 done in grading or constructing said roads, the said company, its agents, servants, and employees were trespassers ab initio, *and acquired* and said plaintiff, in consequence of any work done by him, acquired no right to the delivery of any State bonds or to any compensation for such grading or construction to any extent or in any form whatever.

And these defendants admit that the governor of said State caused to be issued to the said company certain bonds of said State of the description stated in said plaintiff's bill; but as to the number of said bonds or the time or times when issued, or as to the evidence made or required to induce such issuance, these defendants have no knowledge or information, save from the allegations contained in said plaintiff's said bill; and as to whether said company at any time ever transferred the said State bonds or any part thereof to the said plaintiff, these de-

fendants have no knowledge or information save from the allegations of said plaintiff's bill. And these defendants deny that said Southern Minnesota Railroad Company ever endorsed any of said bonds; and as to whether any of said bonds at any time had thereon the endorsement set forth in said plaintiff's said bill these defendants have no
197 knowledge or information save from the allegations of the said bill.

And these defendants admit that said Southern Minnesota Railroad Company never made any payment of the interest on said State bonds except as in said plaintiff's bill alleged, and made default in the payment of the interest on the first-mortgage bonds in said bill mentioned, and abandoned work on the said railroads, and that no work was afterwards done on said railroads by said company, and no more State bonds were thereafter issued to said company as in said plaintiff's said bill alleged; and that these defendants have been informed and believe that no part of the principal or interest of said State bonds has been paid except as in said plaintiff's bill alleged, but deny, upon information and belief, that there is any sum whatever, for interest or otherwise, due to said complainant for or on account of any of the matters in his said bill set forth.

And these defendants admit that the governor of said State of Minnesota, having been in writing required so to do, duly caused the trust-deed in said plaintiff's bill set forth to be foreclosed, the lands, properties, rights, privileges, and franchises granted and conveyed in and by said trust-deed, to be exposed to sale at public auction as in said
198 bill alleged, and did duly bid off and purchase the same for and in the name of said State of Minnesota, and did cause the necessary conveyances to effectuate said sale to be executed and filed as in said bill alleged.

And these defendants admit that on the 4th day of March, 1864, the legislature of the State of Minnesota passed an act, approved on that day, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," by which all the rights, benefits, privileges, franchises, property, and interests of the said Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by said company before that time done or suffered, or by reason of any forfeiture, or by or under any laws of said State, acting for and in behalf of the State, or by reason of a sale of the same, or any part of the same, by the governor of said State, and a bidding in and purchase by the governor of said State for the benefit of said State, pertaining to the line of road from St. Paul and St. Anthony, via Minneapolis, to a point of junction at Shakopee City, in the county of Scott, and thence to
199 Belle Plaine, Clarksville, Le Seuer, Traverse de' Sioux, St. Peter, Kasota, Mankato, and South Bend to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, 1855, and in the several acts amendatory thereof, were granted and transferred to certain persons, in such act of the legislature named, and their associates and successors, together with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company or Southern Minnesota Railroad Company had or might or could have had by reason of or under any acts of the

legislature; and these defendants admit that by said act of 1864 the defendant, the St. Paul and Sioux City Railroad Company was clothed and invested with its corporate rights and franchises, and acquired all the interest which the State of Minnesota had acquired under and by virtue of the aforesaid act of Congress, appropriated to aid in the construction of a railroad from St. Paul and St. Anthony, via
200 Minneapolis, to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Seuer, Traverse de' Sioux, St. Peter, Kasota, Mankato, and South Bend to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River. And these defendants admit that thereafterwards the name of the defendant, the St. Paul and Sioux City Railroad Company, was lawfully changed from the Minnesota Valley Railroad Company to the St. Paul and Sioux City Railroad Company, as in said bill alleged, to which it makes its answer under that name.

And these defendants admit that the State of Minnesota was at the date of said act of March 4, 1864, seized and possessed of the lands described in Schedule A, annexed to said bill of complaint, but denies that said State ever acquired any right, title, or interest in or to said lands, or any part or parcel thereof, by virtue of any act, deed, or conveyance by the said Southern Minnesota Railroad Company, done or suffered, or in any other manner, save under and by virtue of the act of Congress aforesaid, and denies that the said Root River Valley and Southern Minnesota Railroad Company, or the said Southern Minnesota Railroad Company, was ever
201 authorized to sell any of such lands, and denies that any of said lands, or any of the property, rights, franchises, interests, or things granted by said act of the legislature of 1864, was ever held in trust or as a fund by said State for the payment of any of said State bonds or of any part of the principal or interest thereof, and as to whether at the time of the passage of said act of 1864 the said plaintiff was the owner of any of said State bonds, or if owner of any, of how many, these defendants have no knowledge or information save from the allegations of said plaintiff's bill, and these defendants deny that said plaintiff ever had any right, claim, or equity to have any part of said bonds or interest thereon paid out of the property, rights, franchises, interests, or things, or the lands aforesaid; and deny that any of the rights, franchises, interests, or things, or the right and interests of said State in the lands aforesaid, granted to and conferred upon said defendant by said act of the legislature, were by that act granted and confirmed without consideration; but on the contrary, these defendants aver that by said act it was expressly provided that said defendant the St. Paul and Sioux City Railroad Company should not acquire any title to the property, rights, franchises,
202 interests, or things aforesaid, nor to any part thereof until it should fully complete and put in running order ten miles of said railroads; and it was further provided by said act that upon the construction and completion of ten miles of said road, with the cars running thereon, the governor should certify the same to the Secretary of the Interior, and thereupon, and not before, said defendant might demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State might then be entitled to under the provisions of the act of Congress aforesaid, approved March 3, A. D. 1857; and that upon the construction and completion of each and every consecutive twenty miles of said railroad the governor of said State of Minnesota, acting for and in behalf of said State, should, in the name of said State of Minnesota,

and under the great seal thereof, make conveyance of a full and absolute title in fee-simple to all lands appertaining to such twenty miles of said road appropriated by said act of Congress as aforesaid to aid in the construction of said road to said defendant; and it was further provided by said act of the legislature that all the rights, privileges, franchises, road-bed, right of way, properties, and immunities
203 granted and conferred by said act of the legislature were so granted upon the express condition that said defendant should construct ten miles of its said road within two years from the twentieth day of January, A. D. 1864; and thirty miles of its said road within three years from said twentieth day of January, and construct and fully equip said road, and all the other portions of said road on the route in said act designated; and that upon failure of said defendant to keep and perform either or any of said conditions, all the unbuilt portions of said road, with the property, rights, and franchises appertaining thereto, should revert to said State without any other act or ceremony whatever. And that said defendant has met and complied with all and singular the requirements and conditions of said act, and of the acts of the legislature amendatory thereof, and in so doing has built, completed, equipped, furnished, maintained, and operated more than one hundred and twenty miles of its said road.

And in such building, completion, equipment, furnishing, maintaining, and operating of its said road has necessarily and duly paid out and expended large sums of money, amounting in the aggregate to more
204 than three millions of dollars.

And these defendants admit that the State of Minnesota cancelled all the bonds to the said State issued by the said original Southern Minnesota Railroad Company, as in said plaintiff's bill alleged.

And these defendants admit that at the dates set forth in said plaintiff's bill the governor of the State of Minnesota conveyed to said defendant the St. Paul and Sioux City Railroad Company certain of the lands appropriated by said act of Congress to aid in the construction of the said line of road built, equipped, and owned by said defendant, as in this answer before stated, and admits that said lands amounted in the aggregate to the number of acres in said plaintiff's bill alleged, and alleges that the same embraced and comprised all the lands which the said State was authorized or entitled to dispose of under said act of Congress to aid in the construction of said defendant's said line of road; but these defendants deny that any portion of said lands was ever vested in the said original Southern Minnesota Railroad Company, and denies that the said company was ever authorized to sell or dispose of the same, and deny that the said conveyance to said defendant the
205 St. Paul and Sioux City Railroad Company was without consideration, but aver that said conveyance was made in pursuance of and in obedience to the provisions of said act of the legislature of 1864. That prior to said conveyance said defendant had accepted the grants in said act of the legislature contained, and had accepted and undertaken to perform the obligations by said act imposed upon it, and had entered upon the performance thereof in good faith and with the purpose and design of performing and fulfilling all of said obligations, and had in fact fully built and completed more than ten miles of its said road, and in such building and completion had properly and necessarily laid out and expended large sums of money, amounting in the aggregate to more than four hundred thousand dollars.

And these defendants deny that at the date of the act of the legislature of 1864, or at the date of the conveyance thereof to said defendant

the St. Paul and Sioux City Railroad Company, the said lands were of any greater average value than one dollar and twenty-five cents per acre, and deny that said lands are now of greater average value than four dollars per acre, and deny that the rights, franchises, privileges, and graded road-bed granted to said defendant by act of the legislature aforesaid were of any value whatever. And these defendants deny that at or prior to the 4th day of March, 1864, or at or prior to the conveyance of said lands by the governor of said State of Minnesota to said defendant the St. Paul and Sioux City Railroad Company, or prior to the exhibition of plaintiff's bill, the defendant the St. Paul and Sioux City Railroad Company had any knowledge or notice whatever that the said State of Minnesota held any of said lands upon any trust whatever except the trusts created by the said act of Congress, and deny that at or prior to the dates aforesaid said defendant had any knowledge or notice whatever that the said State held any of the properties, rights, franchises, or things by said act of 1864 to said defendant granted, upon any trust or manner of trust whatever, and deny that said defendant had any knowledge or notice whatsoever that said plaintiff, or any holder or holders of any of the State bonds aforesaid, had, or claimed to have, any right or equity in or to or any claim or lien upon any of the properties, rights, franchises, or things by said act of legislature to said defendant granted, or any of the aforesaid, for the payment of the principal or interest, or any part thereof, of the State bonds aforesaid, but on the contrary allege that it accepted the said grant, with the conditions thereunto annexed, in good faith, and entered on the performance of said conditions and obligations, and made full and due compliance therewith, in the full belief that said grants were free and clear of all right, equity, lien, or incumbrance of every kind, and that it would obtain and become invested with a good to a d properties, rights, franchises, and things by said act of 1864 granted, upon compliance with the conditions in and by said act imposed.

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And these defendants in this behalf further allege that at and prior to the passage of said act of 4 March, 1864, and at and prior to the acceptance thereof by said defendant The St. Paul and Sioux City Railroad Company, the said plaintiff Selah Chamberlain, then being interested in the construction and completion of one of the lines of roads in said act of Congress designated, to wit, the branch via Faribault to the north line of the State of Iowa, west of range sixteen, which said branch line had been located and portions thereof graded, but on which all work had been abandoned, and then being in the State of Minnesota for the purpose of devising some plan in connection with other parties similarly situated, whereby all said roads might be constructed and put in operation at an early day, did confer with the persons named in said act of 1864 as the grantees of the rights and privileges secondly therein conferred, and now owned by said defendant, in reference to procuring the passage of said act, and did strongly advise and urge the passage thereof, and the acceptance of the same by said persons, and gave full assurance that said State had good right to make said grant free and clear of all claims, liens, rights, and equities of all persons whatsoever, and that upon complying with the conditions in said act contained said grantees and their successors would obtain and acquire a perfect title to all and singular the properties, rights, franchises, and things by said act granted, including the land aforesaid, and that said plaintiff did not claim to be entitled to any interest in, or right to, or lien upon any of said lands, or any of the property, rights, and franchises in said

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act embraced and designated as granted to the persons aforesaid. And these defendants allege that said persons were influenced by said
209 plaintiff's conduct and assurances, as stated aforesaid, to accept the said grants and to enter upon said undertaking, and did so accept the same relying in part on said plaintiff's said advice and assurance, and well knowing that said plaintiff had been engaged in grading portions of said branch line of road, and that he was *a* had been for many years a railroad-builder of large means and experience, whose advice and opinions on railroad matters were entitled to great weight. And these defendants allege that had said plaintiff then or subsequently, before said defendant The St. Paul and Sioux City Railroad Company had become liable to perform the obligations imposed by said act of 1864, and had incurred large expenditures thereabout, given any notice or made any claim that he was the owner and holder of a large number of said State bonds received in payment for work done on the line of road now owned by said defendant, and that he was or would be entitled, in consequence thereof, to appropriate said lands or any part thereof to the payment of said bonds or the interest thereon, said defendant would not have accepted said grants or complied with any of the
210 conditions in said act imposed, or made any expenditure in or about the construction or completion of its said line of road. And these defendants aver that by reason of said acts, assurances, and omissions of said plaintiff he is and ought to be estopped from claiming or asserting any right, equity, or interest in or lien upon any of the said lands, or the proceeds thereof, or any part of said lands or proceeds.

And these defendants admit that it, the defendant The St. Paul and Sioux City Railroad Company, has entered into the possession and control of the lands, properties, and franchises granted and conveyed to it as aforesaid, and has built and is operating portions of its line of road as hereinbefore alleged, and admit that it has sold and disposed of portions of the lands conveyed to it as aforesaid to divers parties, in fee, and has mortgaged in good faith and upon valuable consideration, long prior to the exhibition of said plaintiff's bill, all said defendant's lands, properties, and franchises, present and prospective, and that said mortgage still subsists and remains unpaid to a large amount; but these defend-
211 ants allege that all the lands sold and disposed of by it, the St. Paul and Sioux City Railroad Company, have been so sold and disposed of in due course of business and at fair prices, and the proceeds thereof have been are being used solely for the purpose of completing and equipping its said line of road, and in paying just debts and expenses by it lawfully incurred in and about the construction, equipping, and maintaining of the same.

And these defendants admit that it, the St. Paul and Sioux City Railroad Company, has caused its lands to be appraised and has offered the same for sale, and has organized a land department for the due and orderly management of said lands, but allege that it has not offered its lands and is not offering the same except in the usual course of business, for full value and upon advantageous terms to said defendant, and deny that it is offering or is about to sell or dispose of any securities held by it except for full value thereof, in the usual and ordinary course of business, and for the purpose of using the proceeds thereof in the construction and equipment of its said road. And these defend-
212 ants admit that the defendant The St. Paul and Sioux City Railroad Company claims to be and avers that it is the absolute owner, subject to the mortgage and liens hereinafter mentioned, of all and singular the rights, properties, *properties*, and franchises granted

to it by said act of March 4th, 1864, and of all the lands which have been vested in it by or under said act of 1864 and said act of Congress.

And these defendants allege that no portion of the line of railroad which the said Root River Valley and Southern Minnesota Railroad Company, or the said original Southern Minnesota Railroad Company, was authorized to construct was located on the particular or definite route thereof fixed prior to the 21st day of July, 1857, and that no lands appropriated by said act of Congress to aid in the construction of the line of road from St. Paul and from St. Anthony, via Minneapolis, to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Seuer, Traverse de' Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the Big Sioux River, was ever identified, located, or specifically set apart for such purpose until the twentieth day of
213 May, A. D. 1860, when certificate was made of a portion thereof by the Commissioner of the General Land-Office of the United States to the State of Minnesota in the manner provided by the act of Congress entitled "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them," approved August 3, 1854.

And these defendants allege that, in the year 1859, and before any of the lands appropriated as aforesaid had been identified, located, or specifically set apart or certified by the Land-Commissioner of the United States, the said original Southern Minnesota Railroad Company became and was insolvent and wholly unable to proceed with the construction of its line of railroad, and wholly unable to comply with any of the conditions of said act of Congress or of the various acts of the legislature of said Territory and State of Minnesota relating to said company, and did then voluntarily abandon the construction of said road and cease all work upon the same, and did voluntarily abandon the performance of any of the conditions by said various acts imposed
214 upon said company, and all right, claim, and equity to have any of the lands by said act of Congress appropriated for its line of road, and all the rights, franchises, and privileges conferred upon it by the various acts of legislation to it relating, and did entirely fail to complete any part or portion of its said road, and that no further work was done upon said line of road lastly hereinbefore described until said defendant The St. Paul and Sioux City Railroad Company commenced actual work thereon in the year 1865.

And these defendants allege that the greater portion of the work done by said company on the line of road lastly hereinbefore described, prior to said abandonment, had been done upon and across lands belonging to private persons, without right or license obtained from said owners therefor; that no right of way had been secured or paid for by said company, save in a few instances, on or over said last-named line of road as the same was located, and no proceedings had been taken or instituted for the purpose of acquiring said right of way or grounds for depot purposes; but that said defendant The St. Paul and Sioux City Railroad Company, wherever it has used any portions of the road-bed
215 made and existing on the said line of road at the date of the act of 1864, has, save in said few instances, been compelled to buy or condemn, and has purchased or condemned, the necessary right of way across the lands on which said road-bed was constructed, at an expense greatly exceeding the fair and just value thereof, and fully equal to the expense it would have incurred therefor, and for constructing a new road-bed, had no work been done by said company as aforesaid before the date of said act of 1864.

And these defendants allege that the defendant The St. Paul and Sioux City Railroad Company, acquired its corporate rights and franchises under and by virtue of the said act of the legislature approved March 4, 1864, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto;" that in and by said act said State of Minnesota granted and conveyed unto said defendant, and unto its successors and assigns, all the rights, properties, and franchises by said State acquired from the original Southern Minnesota Railroad Company in this answer before alleged by that act to have been granted and conveyed to
216 said defendant, and granted and transferred unto said defendant, and unto its successors and assigns, all the lands, interests, rights, powers, and privileges acquired by said State under said act of Congress of March 3, 1857, by said act of legislature, in this answer before alleged to have been granted and conveyed to said defendant; that afterwards, and by deeds of conveyance bearing dates, respectively, October 9th, 1865, and January 5th, 1856, the State of Minnesota, pursuant to said act of Congress of March 3, 1857, and of said act of legislature of 1864, conveyed unto said defendant, its successors and assigns, the lands described in Schedule A, to the plaintiff's bill annexed, absolutely and without exception or reservation.

And these defendants allege that at the passage of said act of legislature of 1864 the said State of Minnesota purported to be, and was, seized and in possession of all and singular the rights, properties, and franchises by it acquired from the original Southern Minnesota Railroad Company, and granted by said act, and purported to be, and was, seized of all the lands described in Schedule A annexed to said plaintiff's bill, as the absolute owner thereof, subject only to the trusts annexed to the same by said act of Congress of March 3, 1857, and
217 free from all liens and incumbrances, and purported to be, and was, seized absolutely of all the rights conferred by the said act of Congress; and that at the times of the execution of the said several conveyances of said lands in said Schedule A described, to the defendant, the said State purported to be, and was, seized of said lands as the absolute owner thereof, free from all liens and incumbrances, and subject only to the rights in the same which said defendant, the St. Paul and Sioux City Railroad Company, had derived from and under said act of March 4, 1864, and the performance of the conditions therein and thereby imposed.

And these defendants allege that all the grants in said act of legislature of March 4, 1864, contained were made upon the conditions and considerations in this answer before stated; that upon the passage of said act said defendant, The St. Paul and Sioux City Railroad Company, accepted the same, and the grants therein contained, and in good faith, and without any notice, knowledge, information, suspicion, belief, or reason to believe or suspect, that the plaintiff, or any other
218 person or persons, had, or claimed to have, liens upon any of the rights, properties, or franchises, or upon any of the lands, interests, powers and privileges aforesaid, undertook the performance of the conditions by said act on said defendant imposed, and entered upon the construction of its said line of railroad, and had fully completed and put into operation before the exhibition of said plaintiff's bill the number of miles thereof in this answer before alleged, and had performed all the conditions by said act imposed, and in the construction and equipment of its said road, and in the performance of said conditions, had expended not less than three millions of dollars; and these defendants fur-

ther allege that all conveyances to it of lands were made, from time to time, after the completion by said defendant, the St. Paul and Sioux City Railroad Company, of each section of its said railroad of the length of ten miles for the first, and *for* twenty miles for those succeeding, pursuant to said act of legislature of March 4, 1864, and of the various acts amendatory thereof, and that no lands have been conveyed to said defendant in advance of the construction of the proper portion of
219 said defendant's said line of road to which said land appertained, and that said State of Minnesota never sold, or attempted to sell, any of the lands by said act of Congress of March 3, 1857, appropriated to aid any of the lines of road therein, and in said plaintiff's bill set forth, in advance of the construction of any portion of said roads, or in other manner than as set forth herein.

And these defendants further allege that the defendant The St. Paul and Souix City Railroad Company never had any notice of the existence or contents of the instrument of contract and conveyance executed by the said the original The Southern Minnesota Railroad Company to the State of Minnesota set out at large in said plaintiff's bill, nor that said plaintiff, or any other person, had or claimed to have any right to or lien or claim upon, legal or equitable, any of the lands aforesaid or upon any of the rights, franchises, or properties aforesaid until the exhibition of said plaintiff's said bill.

And these defendants further allege that said plaintiff well knew of the passage of said act of legislature of March 4, 1864, entitled as aforesaid, and of the contents thereof, at the time of its passage, and
220 urged and advised the passage thereof, claiming and asserting that in no other way could said roads be built and completed and said State be enabled, through such building and completion, and the more speedy increase of population and greater development of the natural wealth and resources of the State, which would be sure to accompany and follow such building and completion, to raise means sufficient to pay the said State bonds or the interest thereon, to the payment of which the faith and credit of the State had been pledged; and said plaintiff then well knew of the exact condition of said State bonds and all the facts connected therewith, and of the temper and tone of the public mind in regard to the recognition and payment of the same, and well knew who owned and held the greater portion of the same; and, without disclosing to said defendant The St. Paul and Sioux City Railroad Company, or the persons named as grantees in said legislative act of 1864, or any of them, that he held any of said bonds or intended to claim or would thereafter claim that they constituted a lien upon any of the rights, franchises, or properties granted in said last-named act to this defendant, or upon any of the said lands,
221 he, the said plaintiff, then being present in the city of St. Paul, where said legislature was held, and in frequent consultation with said grantees, their associates and successors, did advise them to accept said grants and incur the obligations thereby imposed, and did then and there repeatedly assure them that by so doing and by performing the said conditions and obligations they would acquire a good and perfect title to all and singular said lands, rights, franchises, properties, immunities, and things set forth and granted in said act of 1864; that said persons relied upon said advice and assurances of said plaintiff, believing them to be made in good faith and with an honest purpose, and, so believing, accepted said grants and assumed and undertook the performance of obligations imposed by said act of 1864, and they and their associates and successors became incorporated with the name and

style as in said act provided; that said plaintiff well knew of such acceptance at the time thereof, and well knew that said defendant immediately thereupon entered on the construction of its said line of road and expended large sums of money thereabout, and well knew during
all the time said defendant was engaged in the performance of
222 the terms and conditions of said act, and in the construction of
its said line of road, and in the expenditure of the said moneys therefor, that said defendant was so engaged in such performance of said conditions and in the construction of its said line of road, and in the expenditure of money thereabout, and negligently and wilfully suffered and permitted said defendant to incur said obligations and make such expenditures, well knowing that such expenditures were made and said obligations incurred by said defendant in reliance upon the advice and assurances of said plaintiff so made as aforesaid, and under the full belief that the title of and to said lands would become lawfully vested in said defendant upon the performance of the conditions of said act imposed and the conveyance thereof by the State, as in said act provided, free and clear of all lien, claims, equity, or incumbrance whatever; and said plaintiff did not at any time give any notice or intimation to said defendant that he, said plaintiff, or any one, claimed to have any rights in or liens upon any of said lands or of the rights, properties, or franchises aforesaid, until the exhibition of his said bill. And these defendants further allege that prior to and at the date of
and subsequent to the passage of the act of legislature
223 of March 4, 1864, said plaintiff well knew that said State was
seized of all the rights, properties, and franchises which had ever belonged to the said original The Southern Minnesota Railroad Company, claiming to be the absolute owner thereof, free and clear from any liens, interests, claims, and equities by or belonging to any other person or persons, corporation or corporations, and that said State was then seized of the lands in said Schedule A described, and of the powers, rights, and interests conferred by said act of Congress of 1857, claiming to be absolute owner thereof, subject only to the trusts thereunto annexed by said act of Congress, and well knew that said defendant The St. Paul and Sioux Railroad Company believed said State was so seized, and that it would vest a perfect title to the same in said defendant upon the performance of the conditions imposed by said act of 1864, as stated aforesaid, and well knew of the execution of the said several conveyances to said defendant of the lands aforesaid, by the said State, at or about the times thereof, and knew that said defendant was offering to convey the same, or portions thereof, absolutely or by way of mortgage, and knew that said defendant did dispose of the same, or parts thereof,
for the purpose of raising money with which to build its said road,
224 but that said *said* plaintiff never denied the title of said State to
said lands, properties, and franchises, as stated aforesaid, but, on the contrary, affirmed the validity thereof, and never made any objection to any of the grants or conveyances aforesaid to said defendant, nor to any of the conveyances made as aforesaid by said defendant, nor to any of its acts and doings in and about the raising and application and expenditure of moneys raised and expended as set forth herein.

And these defendants further aver that heretofore, to wit, on the thirtieth day of June, 1866, the said defendant The St. Paul and Sioux City Railroad Company, then known as The Minnesota Valley Railroad Company, determined, for the purpose of raising money for the purposes of constructing its said line of said railroad, to issue, and did issue, the bonds of said company, in the sum of one thousand dollars, to the num-

ber of thirteen hundred and forty-four bonds, amounting to one million three hundred and forty-four thousand dollars, numbered consecutively from one to thirteen hundred and forty-four, inclusively, and payable to bearer on the first day of July, 1896, with interest, payable semi-annually, at the rate of seven per cent. per annum, and, to secure the payment of said bonds and
225 interest, did, on said thirtieth day of June, 1866, duly execute and deliver to the defendant Thomas A. Scott, as trustee, its deed of trust or mortgage, whereby it conveyed to him, his successors and assigns, forever, for the purpose aforesaid, among other property, all and singular its said road, constructed or to be constructed, from and including its terminus in West St. Paul, and its entire line of railroad to Mankato, including its depot in the last-named city, a total distance of eighty-four miles, more or less, and also all the lands, tenements, and habiliments acquired or appropriated for a right of way for the said railroad, all the easements and appurtenances thereunto belonging or in anywise appertaining, also all side-track, depot-grounds and depots, bridges, culverts, fences, shops, houses, or other structures belonging thereto, and also all franchises of said company, including its corporate privileges then or thereafter possessed; also all the estate and interest of said company in and to all and singular said road and property, both in law and equity, present and prospective, and all income, profits, tolls, and revenues arising from said road and property; which deed of trust or mortgage had a condition that, if said company should well and
226 truly pay said sum of money and interest according to the terms of said bonds, the estate, right, title, and interest of said defendant Thomas A. Scott, and his successors in the trust thereby created, should cease and determine and become void; otherwise the same should be in full force and virtue. And in and by said deed of trust or mortgage, for the purpose of further securing the payment of the principal and interest of the first five hundred thousand dollars of said bonds, to wit, of said bonds numbered consecutively from one to five hundred inclusive, the said company conveyed to said defendant Thomas A. Scott two hundred sections, or one hundred and twenty-eight thousand acres, more or less, of land which said company would become entitled to under the provisions of the said acts of Congress and of the legislature of said State upon the completion of the second twenty miles of its said line of road.

And said deed of trust or mortgage contained a condition that if the said company should well and truly pay all of said five hundred bonds, with interest thereon, then the lien thereby created on said lands should cease and determine.

And afterwards, to wit, on the twenty-fifth day of July, 1866, the said company , for the purpose of enabling it to raise money for the
227 construction of its said railroad by means of said bonds and deed of trust or mortgage, to create and issue, under the authority and provisions of said act of the legislature of March 4th, 1864, preferred or special stocks of said company not to exceed three hundred and fifty thousand dollars; and on said twenty-fifth day of July, 1866, duly made and executed, under its corporate seal, an agreement in writing with the defendant Charles Scheffer, as trustee for the benefit, as in said contract expressed, of all the holders of the preferred or special stock so to be created and issued, whereby said company agreed to create, issue, and deliver to subscribers who shall pay for the same shares of preferred capital stock of said company of the denomination of one hundred dollars each share, the holders of said stock not to be entitled to vote at

any election or in any manner control the company, or participate in the management of its affairs; that said company did thereby guarantee and promise to pay to the holders of said preferred stock a semi-annual dividend of five per cent.; that at any time after the first day of February, 1870, said company might retire any or all of said stock by paying to the holders thereof the par value of the same, with the accrued dividends thereon; said shares to be countersigned by said trus-
228 tees; and thereby further agreed that, to ensure the performance of said agreement in relation to the payment of said dividend, and as security thereof, that it would set apart and pledge to said Scheffer, and to his successors, for the equal benefit of all future holders of said preferred stock, an amount of said bonds, to wit, of those numbered from one to five hundred, inclusive, mentioned in said deed of trust or mortgage, equal to one thousand dollars of said bonds for each seven hundred dollars of such preferred stock, and to deposit such amount of bonds in the First National Bank of the city of St. Paul, to be withdrawn only upon the order of said trustee or his successor. That thereupon, and pursuant to said agreement, said company issued certificates of shares of such preferred or special stock to the amount of three hundred and fifty thousand dollars, each of which certificates stated that it was issued pursuant to said agreement, and deposited to secure the performance of said agreement in relation to the dividends on said stock in said First National Bank, an amount of said bonds numbered from one to five hundred, inclusive, equal to five hundred thousand dollars; and the said certificates of shares of stock hav-
229 ing been duly countersigned by said Charles Scheffer, as such trustee, said company sold and delivered the same to divers persons, who subscribed for and paid said company the par value thereof.

And afterwards, to wit, on or about the fifteenth day of March, 1867, the said company determined, for the purpose of further enabling it to raise money for the construction of its said railroad from Belle Plaine to Mankato by means of said bonds and deed of trust or mortgage, to create and issue, under the authority and provisions of said act of the legislature of March fourth, 1864, a second class of preferred or special stock of said company, not to exceed six hundred and fifty thousand dollars in amount; and on said fifteenth day of March, 1867, for that purpose, made and executed, under its corporate seal, an agreement, in writing with the defen. Charles Scheffer, as trustee, for the benefit, as in said contract expressed, of all the holders of said second class of preferred or special stock so to be created and issued, whereby said company agreed to create and issue, and deliver to subscribers who should pay for the same, shares of such preferred or special stock, of the denomination of one hundred dollars each, the holders of such stock
230 not to be entitled to vote at any election, or in any manner control the company, or participate in the management of its affairs; that said company did thereby guarantee and promise to pay to the holders of said preferred stock a quarterly dividend of two and one-half per cent.; that at any time after the first day of January, 1873, said company might retire any or all of said stock by paying to the holders thereof the par value of the same, with the accrued dividends thereon, the certificates of said shares to be countersigned by said trustee; and thereby further agreed that, to ensure the performance of said agreement in relation to the payment of said dividend, and as security thereof, the said company thereby set apart and pledged to said trustee and his successor, for the equal benefit of all future holders of such preferred stock, an amount of the bonds of said company hereinbefore mentioned, num-

bered above five hundred, equal to one thousand dollars of said bonds to each seven hundred and fifty dollars of such preferred stock, and to deposit such bonds in the First National Bank of St. Paul, to be withdrawn only on the order of said trustee or his successor. And in and by said agreement said company did convey to said Charles Scheffer, as such trustee, his successor and assigns, forever, all and singular
231 its right, title, and estate, present and prospective, in and to all and singular the two hundred sections of land, containing one hundred and twenty-eight thousand acres, more or less, which said company then was or might be entitled to receive by virtue of the laws of the Congress of the United States and the laws of the State of Minnesota, for the construction of twenty miles of the said road, being the twenty miles commencing at the end of the fortieth mile from St. Paul; which said conveyance was made to secure the performance by said company of its said agreement in relation to said preferred or special stock and said second class, and was conditioned to be void if said company should keep and perform all and singular its said agreement.

That thereupon, and pursuant to said agreement, said company duly issued certificates of shares of such preferred stock of the second class to the amount of five hundred and eighty-one thousand dollars, each of which certificates referred to said agreement last hereinbefore referred to, and stated that the same was issued according to such agreement, and said company also deposited, to secure the performance of said
232 agreement in relation to the dividends on said stock, in said First National Bank, an amount of said bonds numbered above five hundred equal to seven hundred and twenty six thousand dollars, and the said certificates of shares of stock having been duly countersigned by said trustee, said company sold and delivered the same to divers persons, who subscribed for and paid said company the par value thereof.

And afterwards, the said company having determined to extend its said road across the Mississippi River to and into the city of St. Paul, and, in conjunction with the Minnesota Central Railroad Company, to construct, for their joint ownership and use, a bridge across said river and a track from the line of road of said company at a point near Pickerel Lake to and across said bridge, and from said bridge into the city of St. Paul, and also to construct for itself a depot and side-tracks, determined, in order to raise money for that purpose, to create and issue a third class or series of special stock in an amount not exceeding two hundred thousand dollars, and for that purpose said company, on the first day of March, 1869, duly made and executed, under its corporate seal, an agreement in writing with the defendant Charles Scheffer, as trustee for the benefit, as in said contract expressed, of all the holders of said class or series of special stock, whereby said company agreed to create,
233 issue, and deliver to persons paying for the same, shares of special stock of said company of the denomination of one hundred dollars each, the holders of such stock not to be entitled to vote at any election, nor in any manner participate in the management of the affairs of said company; that said company did thereby guarantee and promise to pay to the holders of said special stock a semi-annual dividend of five per cent.; that at any time after the first day of November, 1875, the said company might retire any or all of said stock by paying to the holder thereof the par value of the same, with all due and accrued dividends thereon. And as security for the said stock so to be issued, and to secure the payment of the dividends and the final redemption of said stock, the said company did, in and by said agreement, convey unto the said Charles Scheffer, as such trustee, all its right, title, and interest, acquired and to be acquired, in the portion of its railroad, with all its

bridges and appurtenances, to be constructed by said company with said Central Minnesota Railroad Company as aforesaid, and all its right, title, and interest in and to all side-tracks, turn-outs, turn-tables, water-stations, houses or warehouses, depots, or other property connected with its said road from said Pickerel Lake to and into the city of
234 St. Paul, including all grants and franchises belonging thereto, convenient and necessary to operate the same, and did also, in and by said agreement, sell and convey unto said Charles Scheffer, as such trustee, all and singular the following-described lands, situated in the county of Watonwan, and State of Minnesota, to wit: Township one hundred and six (106) north, of range (30) west; the north half southeast quarter and east half of southeast quarter of section three, (3;) all of sections five, (5,) seven, (7,) nine, (9,) thirteen, (13,) fifteen, (15,) seventeen, (17,) nineteen, (19;) the south half of section eleven, (11;) the north half southwest quarter and north half of southeast quarter of section twenty-one, (21;) and the north half of sections twenty-three, (23) and twenty-nine, (29,) of township one hundred and seven (107) north, of range thirty (30) west; all of section seven, (7,) of township one hundred and eight (108) north, range thirty (30) west; all of sections seventeen (17) and thirty-one, (31,) the south half of section nine, (9,) the north half and southwest quarter of section fifteen, (15,) of township one hundred and five (105) north, of range thirty-one, (31;) all of section five, (5,) of township one hundred and six (106) north, range thirty-one, (31;) all of sections nineteen, (19,) twenty-five,
235 (25,) twenty-nine, (29,) thirty-one, (31,) and thirty-five, (35,) and the south half and northwest quarter of section thirty-three, (33,) in township one hundred and seven (107) north, range thirty-one (31) west; all of sections one, (1,) three, (3,) five, (5,) seven, (7,) nine, (9,) and eleven, (11,) the north half and southwest quarter of section thirteen, (13,) and all of sections fifteen, (15,) seventeen, (17,) nineteen, (19,) and twenty-seven, (27,) of township one hundred and eight (108) north, range thirty-one (31) west; all of sections twenty-three, (23,) twenty-five, (25,) thirty-one, (31,) and thirty-five, (35,) the south half, the northeast quarter, and the east half of the northwest quarter of section twenty-seven, (27,) being lands conveyed to said company by said State of Minnesota: to have and to hold the same to said trustee, his successor and assigns, forever. Which said grants and conveyances were, in and by said agreement, conditioned to be void if said company should keep and perform all and singular the conditions of said agreement.

That thereupon, and pursuant to the conditions of said agreement, the said company by the name of the St. Paul and Sioux City Railroad Company, having in the mean time adopted that name, duly issued certificates of shares of such special stock to the amount of two hundred thousand dollars, each of which certificates referred to said
236 agreement and stated that it was issued pursuant thereto, and said certificates having been duly countersigned by said trustee, the said company sold and delivered the same to divers persons, who paid said company the par value thereof.

And afterwards, to wit, on the second day of January, 1871, the said company, being then indebted in a large amount for expenses incurred in constructing its said railroad from St. Paul to St. James, determined to create and issue, for the purpose of raising money to pay such indebtedness, special stock to the amount of two million four hundred thousand dollars, and to the end on that day duly made and executed under its corporate seal an agreement in writing with the defendant William R. Marshall, as trustee for the holders of said special stock as in said

agreement expressed, in and by which agreement said company agreed to create and issue twenty-four thousand shares of special stock in shares of one hundred dollars each, the holders thereof not to have a right (by reason thereof) to vote at any election of said company, said shares to bear a half-yearly dividend of three and one half per cent., payable only
237 from the proceeds of sales of the lands in and by said agreement pledged and set apart, as hereinafter shown, for the payment thereof, and to deliver such shares, upon payment for the same, to persons holding the common stock of said company, at the rate of one share of such special stock for each share of common stock so held by such persons; the said company in and by said agreement reserving the right to retire any part or all of said special stock by paying to the holders thereof the par value of the same and the accrued dividends thereon.

And for the purpose of securing the payment of such dividends and the final extinction and payment of the full par value of such special stock, the said company did in and by said agreement set apart and specially appropriate the lands granted by Congress to aid in constructing said company's road to the extent and quantity of four hundred thousand acres, deeded and to be deeded by the State of Minnesota to said company, being all the lands so granted and remaining unsold on the first day of July, 1871, except the excess of the entire grants over said four hundred thousand acres, which excess so excepted should be made up out of the lands pledged by said company to secure the first, second, and third issues of preferred or special stock in this
238 answer before mentioned; and in and by said agreement said company agreed that, whenever thereto required by said trustee or the attorney in said agreement provided for, it would make such further writings, mortgage, or lien on said lands in favor of said special stock as might be desired, advised, or required to perfect and secure the holders thereof in the benefit of said lands as therein provided; and in and by said agreement said company agreed that to more fully secure the appropriation of lands to that purpose it would make and deliver with said agreement, to one Elias F. Drake, an irrevokable power of attorney, authorizing him in the name of said company, as attorney in fact, to contract, sell, and convey any or all of said lands at discretion, and apply the proceeds in payment of dividends due on said stock, and the excess in liquidation and reduction of the principal thereof.

And simultaneously with the execution of said agreement said company executed and delivered to said Elias F. Drake the power of attorney in said agreement provided for.

And thereupon and pursuant to said agreement said company created and issued said special stock, and sold and delivered to divers persons, who paid said company the par value thereof, shares of said stock amounting to two million four hundred thousand dollars. And
239 on the 15th day of November, 1870, the said company determined to make a consolidated issue of preferred stock for the purpose of retiring former issues of like stock when the same might be done by consent of the holders or at maturity; and for that purpose said company on that day duly made and executed, under its corporate seal, an agreement in writing with the defendants Charles Scheffer and Horace D. Hall, whereby said company agreed with said Scheffer and Hall, as trustees, as therein expressed, for all persons who might become the owners of such preferred stock to issue preferred stock of said company in shares of one hundred dollars each, to an amount not exceeding one million six hundred thousand dollars, the holders thereof not to have the right to vote upon

the same at any election of said company, nor participate in any of the earnings, profits, or property of said company, and thereby guarantied and promised to pay the holders of such stock a quarter-yearly dividend of two per cent., and agreed to assign to said Scheffer and Hall, as such trustees, one hundred and nineteen dollars of the bonds of said company, issued, as hereinbefore stated, for each one hundred dollars of said stock issued and disposed of, to be held as security for the
240 payment of the said dividends on such stock and the final redemption of the principal thereof.

And pursuant thereto said company issued such preferred stock, and sold and disposed of three hundred and seventy-six thousand dollars thereof to divers persons; and as security for the same, under and pursuant to said agreement, assigned to said Scheffer and Hall an amount of said bonds, numbered from one to five hundred inclusive, equal to one hundred and nineteen dollars of such bonds for each one hundred dollars of said stock, and said stock is now outsanding, and such bonds are held by said Scheffer and Hall as security therefor as aforesaid.

And these defendants further aver that the persons who purchased the preferred or special stock of the several issues hereinbefore set forth purchased the same in good faith, for the full value thereof, and without any notice or knowledge of any right, title, equity, claim, or demand of the plaintiff, or any person other than the said company, in or to the lands and property mentioned in the plaintiff's said bill of complaint or any part thereof.

And these defendants deny all and all manner of unlawful
241 combination and confederacy, without this, that there is any other matter or cause or thing in the said plaintiff's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

E. C. PALMER AND
GILFILLAN & WILLIAMS,
Solicitors and of Counsel.

242 And on the same day came the defendants Samuel B. Ruggles and Albon P. Man, by Henry J. Horn, esq., & Messrs. Gilfillan & Williams, their solicitors, and filed in the clerk's office of said court their answer to the plaintiff's bill, in the words and figures following, viz:

243 Circuit court of the United States, district of Minnesota.

SELAH CHAMBERLAIN *against* THE SAINT PAUL & SIOUX CITY RAILROAD Company and The Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon P. Man, Charles Scheffer, William R. Marshall, Thomas A. Scott, Horace W. Hall, George I. Seeney, and John A. Stewart.	In equity.

The joint and several answer of Samuel B. Ruggles and Albon P. Man, two of the above-named defendants, to the complaint of Selah Chamberlain.

These defendants, Samuel B. Ruggles and Albon P. Man, now at all

times hereafter saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised is material or
244 necessary for them to make answers thereto, and answering each for himself, and to best and utmost of his own knowledge, information, and belief, and not one for the other, do answer and say as follows:

They admit that the Southern Minnesota Railroad Company, defendant, is a corporation incorporated under the laws of the State of Minnesota, established and doing business in and a citizen of the State of Minnesota, and that these defendants are residents and citizens of the State of New York.

And they admit that, on or about the third day of March, 1857, the Congress of the United States passed an act approved on that day, entitled as in said complainant's said bill alleged, but they insist that the United States did not by said act grant to the Territory of Minnesota any present beneficial interest in any lands whatever, and also insist that by the terms or provisions of said act the said Territory of Minnesota did not acquire any present beneficial interest in any lands whatever.

And these defendants admit that it was provided by said act of Congress that the lands in said act referred to were to be disposed of only in the manner in folio numbered five, (5,) and the first six
245 lines of folio numbered six, (6,) in said complainant's said bill alleged.

And admit that on or about the 23d day of May, 1857, the legislature of said Territory of Minnesota passed an act approved on that day, entitled as in said complainant's said bill alleged, and that by such legislative act the Root River Valley and Southern Minnesota Railroad Company, a corporation created and with powers as in said bill of complaint alleged, was authorized and empowered to survey, locate, and construct and perpetually to have, use, and maintain and operate those certain lines of railroad in said bill alleged; but these defendants, on information and belief, and as they are advised, deny that by such act of the legislature the said Territory of Minnesota disposed, passed to, or conferred upon the said Root River Valley and Southern Minnesota Railroad Company any present or beneficial interest, right, or title in or to any lands whatever, or that by the terms and provisions of said act of the said legislature the said The Root River Valley and Southern Minnesota Railroad Company acquired any present or beneficia linterest, right, or title in or to any lands whatever.

And these defendants admit that on or about the 23d day of May, 1857, the legislature of said Territory of Minnesota changed the
246 name of the said Root River Valley and Southern Minnesota Railroad Company, as in said bill of complaint alleged, and these defendants have no knowledge or information, save from said bill of complaint, but believe it to be true, that by an amendment to the constitution of the State of Minnesota, adopted at the date in said bill of complaint alleged, provision was made for a loan to the said corporation, for the purposes, in the manner, to the amount, and upon the terms in said bill alleged, of the credit of said State. And they admit that on the 12th day of August, 1858, the legislature of the State of Minnesota passed an act entitled "An act concerning land-grant railroads," wherein and whereby provision was made as in the said bill of complaint alleged, and

admit, on information and belief, that afterwards, and prior to the issuing of any bonds under said constitutional amendment to the said Southern Minnesota Railroad Company, the original The Southern Minnesota Railroad Company, at or about the dates mentioned in said bill of complaint undertook to execute to Benjamin Pringle and Andrew G. Chatfield and instrument similar to that in said bill mentioned; but whether the same was duly executed, or whether it was or is of the character or contents set forth in said bill, these defendants have no knowledge
247 or information save from the allegations of said bill, and cannot answer as to their belief or otherwise.

And these defendants, further severally answering, say, and first the said Samuel B. Ruggles says, he has no knowledge or information save from said bill of complaint, and cannot answer as to his belief, whether the said original The Southern Minnesota Railroad Company ever could or did convey to the said State any right, title, or interest in or to any of the lands described in any of the instruments last aforesaid; and the said Albon P. Man says he is informed, and believes it to be true, that said company did not, nor ever could, convey to said State any right, title, or interest therein.

And these defendants admit, upon information and belief, that said original The Southern Minnesota Railroad Company, did enter upon the construction of its said railroads, but whether it made any contract with said plaintiff, or whether said plaintiff ever did, or caused to be done, any grading or work upon said roads, or laid out or expended any moneys in causing any work to be done upon said roads, these defendants have no knowledge or information save from the allegations in said
248 plaintiff's said bill of complaint, and cannot as to their belief or otherwise; and these defendants, on information and belief, deny that any ten miles of said road was ever constructed and completed by said original Southern Minnesota Railroad Company, or any one in its behalf.

These defendants, further answering, say they are informed and believe that said original Southern Minnesota Railroad Company did not acquire any continuous ten miles of right of way, and that neither said company or said plaintiff constructed any such extent of road or roadway as to entitle it or him to receive or claim any of the said State bonds as compensation therefor.

And these defendants, on information and belief, admit that the governor of said State caused to be issued to the said company certain bonds of said State of the description stated in said plaintiff's bill, but as to the number of said bonds, or the time or times when issued, or as to the evidence made or required to induce such issuance, and as to whether said company at any time ever transferred the said State bonds or any part thereof to the said plaintiff, these defendants have no knowledge or information save from the allegations of the complainant's said bill, and cannot answer as to their belief or otherwise.

249 And these defendants are informed and believe it is not true, and therefore deny, that said original The Southern Minnesota Railroad Company, ever endorsed any of said bonds; and as to whether any of the said bonds at any time had the endorsement set forth in plaintiff's said bill, these defendants have no knowledge or information save from the allegations of the said bill, and cannot answer as to their belief or otherwise.

And these defendants, on information and belief, admit that said original the Southern Minnesota Railroad Company never made any payment of the interest on said State bonds, except as in said plaintiff's

bill alleged, and made default in the payment of the interest on the first-mortgage bonds in said bill mentioned, and abandoned work on the said railroads, and that no work was afterwards done on said railroads by said original company, and no more State bonds were thereafter issued to said company, as in said plaintiff's said bill alleged. And these defendants have been informed and believe that no part of the principal or interest of said State bonds has been paid, except as in said plaintiff's bill alleged; but these defendants deny, upon information and belief, that there is any sum whatever, for interest or otherwise,
250 due to said complainant for or on account of any of the matters in his said bill set forth, unless it be due to him from the State of Minnesota upon its bonds, if any, held by him; and whether any sum is so due these defendants are utterly ignorant, and cannot answer as to their belief or otherwise.

And these defendants, on information and belief, admit that the governor of said State of Minnesota, having been in writing requested so to do, duly caused the trust-deed in said plaintiff's bill set forth to be foreclosed, the lands, properties, rights, privileges, and franchises granted and conveyed in and by said trust-deed to be exposed to sale at public auction, as in said bill alleged, and did duly bid off and purchase the same for and in the name of said State of Minnesota, and did cause the necessary conveyances to effectuate said sale to be executed and filed, as in said bill alleged.

And these defendants admit that on the 4th day of March, 1864, the legislature of the State of Minnesota passed an act approved on that day, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," by which act all the rights, benefits, privileges, franchises, property, and interests of the said original The Southern Minne-
251 sota Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by said company before that time done or suffered, or by reason of any forfeiture, or by or under any laws of said State, or any foreclosure by the governor of the State acting for and in behalf of the State, or by reason of a sale of the same or any part of the same by the governor of said State, and a bidding in and purchase by the governor of said State for the benefit of said State, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the Winona & St. Peter Railroad at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, 1855, and in the several acts amendatory thereof, were granted and transferred to certain persons in such act of the legislature named, and their associates and successors, together with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company, or original the Southern Minnesota Railroad Company had or might or could have had by reason of or under any acts of the legislature; and these defendants admit that by said act of 1864 the said defend-
252 ant The Southern Minnesota Railroad Company was clothed and invested with its corporate rights and franchises and acquired all the interest which the State of Minnesota had acquired under and by virtue of the aforesaid act of Congress in the lands appropriated to and for the construction of a railroad from La Crescent, via Root River, to a point of junction, east of range (17) seventeen, with the certain line of road in said act of Congress designated as a line from Winona, via

St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude.

And these defendants, on information and belief, admit that the State of Minnesota was, at the date of said act of March 4, 1867, seized and possessed of the lands described in Schedule B, annexed to said bill of complaint; but they are informed and believe it is not true, and therefore deny, that said State ever acquired any right, title, or interest in or to said lands, or any part or parcel thereof, by virtue of any act, deed, or conveyance of the said original The Southern Minnesota Railroad Company done or suffered, or in any other manner save under and by virtue of the act of Congress aforesaid; and they are also informed and believe it is not true, and therefore deny, that the said Root River Valley and Southern Minnesota Railroad Company, or the said original The Southern Minnesota Railroad Company, was ever authorized to
253 sell any of such lands, or that any of said lands, or any of the property, rights, franchises, interests, or things granted by said act of the legislature of 1864, was ever held in trust or as a fund by said State for the payment of any of said State bonds, or of any part of the principal or interest thereof; and as to whether at the time of passage of said act of 1864 the said plaintiff was the owner of any of said State bonds, or if owner of any, of how many, these defendants have no knowledge or information save from the allegations of said plaintiff's bill, and cannot answer as to their belief or otherwise; and these defendants are informed and believe it is not true, and therefore deny, that said plaintiff ever had any right claim or equity to have any part of said bonds or interest thereon paid out of the property, rights, franchises, interests, or things, or the lands aforesaid, or that any of the rights, franchises, interests, or things, or the right and interests of said State in the lands aforesaid, granted to and conferred upon the Southern Minnesota Railroad Company, defendant, by said act of the legislature were by that act granted and conferred without consideration; but, on the contrary, these defendants aver that by said act of 1864 it was expressly provided that said defendant The Southern Minnesota
254 Railroad Company should not acquire title to the property, rights, franchises, interests, or things aforesaid, nor to any part thereof, until it should fully complete and put in running order ten miles of said railroads. And it was further provided by said act that upon the construction and completion of ten miles of said road, with the cars running thereon, the governor should certify the same to the Secretary of the Interior, and thereupon, and not before, said defendant The Southern Minnesota Railroad Company might demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State might then be entitled to under the provisions of the act of Congress aforesaid approved March 3, A. D. 1857, and that upon the construction and completion of each and every consecutive twenty miles of said railroad the governor of said State of Minnesota, acting for and in behalf of said State, should, in the name of said State of Minnesota and under the great seal thereof, make conveyance of a full and absolute title in fee-simple to all the land appertaining to such twenty miles of said road appropriated by said act of Congress as aforesaid to aid in the construction of said road to the defendant The Southern Minnesota Rail-
255 road Company. And it was further provided by said act of the legislature that all the right of way, properties, and immunities granted and conferred by said act of the legislature were so granted upon the express condition that the Southern Minnesota Railroad Com-

pany, defendant, should construct ten miles of its said road within two years from the twentieth day of January, A. D. 1864, and thirty miles of its said road within three years from said twentieth day of January, and construct and fully equip said road and all the other portions of said road on the route in said act designated, and that upon failure of the Southern Minnesota Railroad Company, defendant, to keep and perform either or any of said conditions, all the unbuilt portions of said road, with the property, rights, and franchises appertaining thereto, should revert to said State without any other act or ceremony whatever.

And these defendants are informed and believe, and therefore aver, that the defendant The Southern Minnesota Railroad Company met and complied with all and singular the requirements and conditions of said act of the legislature of 1864, and of the acts of the legislature amendatory thereof, and in so doing built, completed, equipped
256 and furnished prior to the commencement of this suit, and has ever since maintained and operated, more than one hundred and sixty-seven miles of its said road; and in such building, completion, equipment, and furnishing of its said road, and of each and every portion thereof, necessarily and duly paid out and expended large sums of money, which sums amount in the aggregate to nearly or quite five millions of dollars.

And these defendants admit, on information and belief, that the State of Minnesota cancelled all the bonds to the said State issued by the said original Southern Minnesota Railroad Company, as in said plaintiff's bill alleged.

And these defendants admit that at the dates set forth in said plaintiff's bill the governor of the State of Minnesota conveyed to said defendant The Southern Minnesota Railroad Company certain of the lands appropriated by said act of Congress to aid in the construction of the said line of road built, equipped, and owned by said defendant, as in this answer before stated, and admit that said lands amounted in the aggregate to the number of acres in said plaintiff's bill alleged, and allege that the same embraced and comprised all or nearly all the lands which the said State was authorized or entitled to dispose under
257 said act of Congress of 1857 to aid in the construction of said Southern Minnesota Railroad Company, defendants, said line of road; but these defendants are informed and believe it is untrue, and therefore deny, that any portion of said land was ever vested in the said original The Southern Minnesota Railroad Company, or that the said company was ever authorized to sell or dispose of the same or of any part of the same, or that the said conveyances to said defendant the present Southern Minnesota Railroad Company, or any of them, was or were without consideration, but aver that said conveyances were made in pursuance of and in obedience to the provisions of said act of the legislature of 1864; that prior to said conveyances the defendant The Southern Minnesota Railroad Company had accepted the grants in said act of the legislature contained, and had accepted and undertaken to perform the obligations by said act imposed upon said defendant, and had entered upon the performance thereof in good faith and with the purpose and design of performing and fulfilling all of said obligations, and had in fact fully built and completed more than ten miles of its said road before the first of said conveyances was made, and in
258 such building and completion had properly and necessarily laid out and expended several hundred thousand dollars, and before the others of said conveyances were made had built and completed at east twenty miles of said road, and in doing so had necessarily ex-

pended many thousand dollars upon each additional mile of said constructed road.

And these defendants, upon information and belief, deny that at the date of the act of the legislature of 1864, or at the date of the conveyances thereof to said defendant The Southern Minnesota Railroad Company, the said lands were of any greater average value than about four dollars per acre, and deny that said lands, except those which have been since sold and improved, are now of greater average value than about six dollars per acre, and, on information and belief, also deny that the rights, franchises, privileges, and graded road-bed granted to said defendant The Southern Minnesota Railroad Company, by act of the legislature aforesaid, were of any such value as alleged in said complaint.

And these defendants, answering each for himself and of his own knowledge, and not one for the other, severally deny that at or prior to the conveyance of said lands by the governor of said State of
259 Minnesota to said defendant The Southern Minnesota Railroad Company, or prior to the exhibition of the plaintiff's , these defendants respectively, to the best of their knowledge, information, and belief, the said Southern Minnesota Railroad Company had any knowledge or notice whatever, or any reason to suspect or believe, that the said State of Minnesota held any of said lands upon any trust whatever, (except the trust created by the said act of Congress,) or that at or prior to the dates last aforesaid the said State held any of the properties, rights, franchises, or things by said act of 1864 granted to said defendant The Southern Minnesota Railroad Company, upon any trust or manner of trust whatever, or that said plaintiff, or any holder or holders of any of the State bonds aforesaid, had or claimed to have any right or equity in or to or any claim or lien upon any of the properties, rights, franchises, or things by said act of the legislature granted to said defendant, the Southern Minnesota Railroad Company, or any of the lands aforesaid, for the payment of the principal or interest, or any part thereof, of the State bonds aforesaid; but, on the contrary, these defendants, on information and belief, allege that the said company accepted the said grant, with the conditions thereto annexed, in good faith,
260 and entered on the performance of said conditions and obligations, and made due and full compliance therewith, in the full belief that said grants were free and clear of all right, equity, lien, or incumbrance of every kind, and that it, the said company, would obtain and become invested with good title to said property, rights, franchises, and things granted to it by said act of 1864, upon and by compliance with the conditions in and by said act imposed.

And these defendants in this behalf further allege, as they are informed and verily believe, that at and prior to the passage of said act of March 4, 1864, and at and prior to the acceptance thereof by said defendant The Southern Minnesota Railroad Company, the complainant, Selah Chamberlain, was interested in the construction and completion of one of the lines of road in said act of Congress designated, and which was dependent upon the same kind of legislation from said State, to wit, the branch, via Faribault, to the north line of the State of Iowa, west of range sixteen, (which said branch line had been located and portions thereof graded, but on which all work had also been abandoned,) and was then present in the State of Minnesota for the purpose of devising plans & obtaining legislation, in connection with other parties similarly situated, whereby
261 all said roads might be constructed and put in operation, and did accordingly confer with the persons named in said act of 1864 as the grantees of the rights and privileges jointly therein conferred and

now owned by said defendant the Southern Minnesota Railroad Company, in reference to procuring the passage of said act, and knew all the terms and conditions of said act, and strongly urge' the passage thereof and the acceptance of the same by said persons, and insisted that said State had good right to make said grant, free and clear of all claims, liens, rights, and equities of all persons whomsoever, and that, upon complying with conditions in said act contained, said grantees and their successors would obtain and acquire a perfect title to all and singular the properties, rights, franchises, and things by said act granted, including the lands aforesaid, and that said complainant did not claim to be entitled to any interest in or right to or lien upon any of the said lands or any of the property, rights, and franchises in said act embraced and designated as granted to the persons aforesaid; and these defendants in like manner allege that said persons were influenced by complainant's said conduct to accept the said grants and to enter
262 upon said undertaking, and did so accept the same, relying in part on complainant's said acts; and these defendants in like manner allege that the said complainant never, then or subsequently, until after said defendant The Southern Minnesota Railroad Company, had become liable to perform the obligations imposed by said act of 1864, and had incurred large expenditures thereabout, and had completed at least thirty miles of its road, and had received therefor the said grants and conveyances pursuant to said act, nor until the filing of his said complaint, gave any notice or made any claim that he was the owner or holder of any of said State bonds received in payment for work done on the said line of road, or acquired in any other manner, or that he was or claimed to be entitled in consequence thereof to appropriate said lands or any part thereof, or to have the same appropriated to the payment of said bonds or the interest thereon; and that, on the contrary, the complainant, although well knowing the facts aforesaid as they from time to time occurred, remained entirely silent in regard to his said alleged claim, and failed to assert the same during all the period of many years while the said company were engaged in the work
263 aforesaid, and while the property was being changed and greatly enhanced in value by the work and expenditures of said company upon the same; and these defendants insist that, by reason of said acts, assurances, and omissions of the complainant, and of such lapse of time, he is and ought to be estopped and precluded from claiming or asserting any right, equity, or interest in or lien upon any of said lands, property, or franchises, or the proceeds thereof.

And these defendants admit that said defendant The Southern Minnesota Railroad Company, has entered into the possession and control of the lands, properties, and franchises granted and conveyed to it as aforesaid, and has built and is operating portions of its line of road, as hereinbefore alleged, and admit and aver that said company has sold and disposed of portions of the lands conveyed to it as aforesaid to divers parties in fee, and has mortgaged in good faith, and upon valuable consideration, as hereinafter more particularly set forth, long prior to the exhibition of said plaintiff's bill, all the said defendant The Southern Minnesota Railroad Company's, lands, properties, and franchises, present and prospective, and that said mortgages still subsist
264 and remain unpaid to a large amount; but these defendants allege that all the lands referred to in said bill of complaint which have been sold and disposed by said defendant The Southern Minnesota Railroad Company have been sold and disposed of in due course of business and at fair prices, and the proceeds thereof have been and are being

used solely for the purpose of completing and equipping its said line of road, and in paying just debts and expenses by it lawfully incurred in and about the construction, equipping, and maintaining of the same, including interest on its debt and its other necessary expenses.

And these defendants admit and aver that the defendant The Southern Minnesota Railroad Company has caused its said lands to be appraised, and has offered the same for sale from time to time, and has organized a land department for the due and orderly management of said lands; but they allege, as they are informed and believe, that it is not offering the same, except in the usual course of business, for full value and upon terms advantageous to said defendant and its creditors; and in like manner deny that it is offering or is about to sell or dispose of any securities held by it, except for full value thereof, in the usual
265 and ordinary course of business, and for the purpose of using the proceeds thereof in payment of legitimate debts and expenses of said company.

And these defendants admit that the defendant The Southern Minnesota Railroad Company claims to be, and they aver, on information and belief, that it is the absolute owner, subject to the mortgages hereinafter set forth, of all and singular the rights, properties, and franchises granted to it by said act of March 4, 1864, and of all the lands which have vested in it by or under said act of 1864 and said act of Congress, except such as it has resold in manner aforesaid.

And these defendants allege, as they are informed and believe, that no portion of the line of railroad which the said Root River Valley and Southern Minnesota Railroad Company or the said original Southern Minnesota Railroad Company was authorized to construct was located or the particular or definite line thereof fixed prior to the 21st day of July, 1857, and that no lands appropriated by said act of Congress to aid in the construction of the line of road from La Crescent to a junction with the line from Winona westwardly were ever identified, located, or specifically set apart for such purpose until the 23d day of May,
266 A. D. 1860, when, as these defendants are informed and believe, a certificate was made of a portion thereof by the Commissioner of General Land-Office of the United States to the State of Minnesota in the manner provided by the act of Congress entitled "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them," approved August 3d, 1854.

And these defendants allege, as they are informed and believe, that in or about the year 1859, and before any of the lands appropriated as aforesaid had been identified, located, or specifically set apart or certified by the Land Commissioner of the United States, the said original The Southern Minnesota Railroad Company, became and was insolvent and wholly unable to proceed with the construction of its line of railroad, and wholly unable to comply with any of the conditions of said act of Congress or of the legislature of the said Territory and State of Minnesota relating to said company, and did then and there voluntarily abandon the construction of said road and cease all work upon the same, and did voluntarily abandon the performance of any of the conditions by said various acts imposed upon said company, and all right, claim, and equity to have any of the lands by said act of Con-
267 gress appropriated for its line of road, and all the rights, franchises, and privileges conferred upon it by the various acts of the legislature to it relating, and did entirely fail to complete any part or portion of its said road; and that no further work was done upon said line of road lastly hereinbefore described until the defendant The South-

ern Minnesota Railroad Company, commenced operations thereon in the year 1865.

And these defendants allege, as they are also informed and believe, that much of the work done by said former company on the line of road lastly hereinbefore described prior to said abandonment had been done upon and across lands belonging to private persons, without right obtained from the owners thereof, and that said defendant The Southern Minnesota Railroad Company, when it has used the road-bed made and existing on the said line of road at the date of the act of 1864, has, save in a few instances, been compelled to buy or condemn, and has purchased or condemned at great expense the necessary right of way across the lands on which said road-bed was constructed.

And these defendants allege that said defendant The Southern Minnesota Railroad Company, acquired its corporate rights and fran-
268 chises under and by virtue of the said act of the legislature approved March 4, 1864, entitled "An act to facilltate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts relating thereto."

That in and by said act said State of Minnesota granted and conveyed unto the defendant The Southern Minnesota Railroad Company, and unto its successors and assigns, all the rights, properties, and franchises by said State acquired from the original Southern Minnesota Railroad Company in this answer before alleged by that act to have been granted and conveyed to the defendant The Southern Minnesota Railroad Company, and granted and transferred unto said defendant and its successors and assigns all the land, interest, rights, powers, and privileges acquired by said State under said act of Congress of March 3, 1857, by said act of legislature in this answer before alleged to have been granted and conveyed to said last-named company; that afterwards and by deeds of conveyance bearing dates, respectively, Jan. 6, 1866, December 5, 1866, and April 16, 1867, the State of Minnesota, pursuant to said act of Congress of March 3, 1857, and of said act of legislature of 1864, conveyed unto the Southern Minnesota Rail-
road, defendant, its successors and assigns, the lands described
169 in Schedule B to the plaintiff's bill annexed, absolutely and without exception or reservation; and these defendants are informed and believe that at the passage of said act of legislature of 1864, the said State of Minnesota purported to be and was seized and in possession as absolute owner thereof, free from all liens and incumbrances, of all and singular the rights, properties, and franchises by it acquired from the original Southern Minnesota Railroad Company, and granted by said act, and purported to be and was seized of all the lands described in Schedule B annexed to the plaintiff's bill as the absolute owner thereof, subject only to the trust annexed to the same by said act of Congress of March 3, 1857, and free from all liens and incumbrances, and purported to be and was seized absolutely of all the rights conferred by the said act of Congress; and that at the time of the execution of said several conveyances of said lands in said Schedule B described to the defendant, the Southern Minnesota Railroad Company, the said State purported to be and was seized of said lands as the absolute owner thereof, free from all liens and incumbrances, and subject only to the rights in the same which said defendant had derived from and under said act of
1864, and the performance of the conditions therein and thereby
270 imposed.

And these defendants allege that all the grants in said act of legislature of March 4, 1864, contained were made upon the conditions

and considerations in this answer before stated; that upon the passage of said act said defendant, the Southern Minnesota Railroad Company, accepted the same and the grants therein contained, and, as these defendants are informed and believe, in good faith and without any notice, knowledge, information, suspicion, belief, or reason to believe or suspect that the complainant or any other person or persons had or claimed to have liens upon any of the rights, properties, or franchises, or upon any of the lands, interest, powers, and privileges aforesaid, undertook the performance of the conditions by said acts imposed upon said defendant, and entered upon the construction of its said line of railroad, and had fully completed and put into operation, without having any such knowledge, notice, or information, or suspicion, and before the exhibition of the said complainant's bill, the number of miles thereof in this answer before alleged, and had performed all the conditions by said act imposed;
and in the construction and equipment of its said road and in the
271 performance of said conditions had expended several millions of dollars.

And defendants further allege that all conveyances to said company of lands were made from time to time after the completion by said defendant, the Southern Minnesota Railroad Company, of each section of the said railroad of the length of ten miles for the first, and ten or twenty miles for those succeeding, pursuant to the said act of legislature of March 4, 1864, and of the various acts amendatory thereof, and that none of the lands referred to in said complaint have, to the knowledge or belief of these defendants, been conveyed to said railroad company in advance of the construction of the proper portion of its said line of road to which said land appertained; and that, as these defendants are informed and believe, said State of Minnesota never sold or attempted to sell any of the lands by said act of Congress of March 3, 1857, appropriated to aid any of the lines of road therein, and in said complainant's bill set forth, in advance of the construction of any portion of said roads, or in any other manner than as set forth herein.

And these defendants further allege that, as they are informed and
and believe, that the defendant The Southern Minnesota Railroad
272 Company never had any knowledge, notice, or reason to believe that said plaintiff, or any other person claiming in similar right, had or claimed to have any right to, or claim or lien, legal or equitable, upon, any of the lands aforesaid, or upon any of the rights, purchases, or properties aforesaid, until the exhibition of said ccomplainant's said bill.

And these defendants further allege, as they are informed and believe, that prior to and at the date of and subsequent to the passage of the act of legislature of March, 1864, said complainant well knew that said State was seized of all the rights, properties, and franchises which had ever belonged to the said original The Southern Minnesota Railroad Company, claiming to be the owner thereof, free and clear from any liens, interests, claims, and equities by or belonging to any other person or persons, corporation or corporations; and that said State was then seized of the lands in Schedule B described, and of the powers, rights, and interests conferred by said act of Congress of 1857, claiming to be absolute owner thereof, subject only to the trusts thereunto annexed by said act of Congress, and well knew that said defendant The Southern
Minnesota Railroad Company believed said State was so seized,
273 and that it would vest a perfect title to the same in said defendant upon the performance of the conditions imposed by said act of 1864, as stated aforesaid, and well knew of the execution of the said

several conveyances to said defendant of the lands aforesaid by the said State at or about the times thereof, and knew the said defendant was offering to convey the same or portions thereof absolutely, or by way of mortgage, and knew that said defendant did dispose of the same or parts thereof for the purpose of raising money with which to build its said road; and that said complainant never denied or questioned the title of said State to said lands, properties, rights, and franchises, as stated aforesaid, but, on the contrary, affirmed the validity thereof, and never made any objections to any of the grants or conveyances aforesaid to the defendant The Southern Minnesota Railroad Company, nor to any of the conveyances made as aforesaid by said company, nor to any of its acts or doings in or about the raising and application and expenditure of moneys raised and expended as set forth herein, until the exhibition of his said bill of complaint.

These defendants further allege that on the 8th day of Agust, 1864, the defendant The Southern Minnesota Railroad Company,
274 for the purpose of raising money for constructing and equipping said road, executed to these defendants as trustees a certain mortgage or deed of trust to secure an issue of the bonds of said defendant The Southern Minnesota Railroad Company of the amount of one million of dollars, and in and by which said mortgage or deed of trust the said defendant The Southern Minnesota Railroad Company conveyed to these defendants all the property then belonging or which should thereafter belong to said defendant The Southern Minnesota Railroad Company, which said mortgage or deed of trust contained a condition whereby the same should be void upon the payment of the principal and interest of said bonds; that these defendants thereupon accepted said mortgage and trust by joining in the execution thereof, and which said mortgage or deed of trust was duly recorded in the proper offices of register in that behalf in the said State of Minnesota shortly after the execution aforesaid, to wit, during or about the year 1864; that simultaneously with or soon after the execution of said mortgage or deed of trust the said defendant the said Southern Minnesota Railroad Company duly issued its bonds aforesaid, secured by said mortgage or deed of trust, payable to bearer, to the amount
275 of nearly or quite one million of dollars aforesaid, and the same were thereupon, during or soon after the year 1864, negotiated and sold by said defendant The Southern Minnesota Railroad Company to divers persons, all of whom purchased and took the same for their full value and in good faith, and also paid for them in full without, as these defendants are informed and believe, any notice of any right, claim, lien, equity, or demand of said plaintiff or any other person to or upon the said lands or any of the property then belonging to or which might thereafter be acquired by said defendant the said The Southern Minnesota Railroad Company, and that, as these defendants are informed and believe, large amounts of said bonds which are now outstanding are held by persons who purchased and so paid for the same for full value and in good faith, without any notice, knowledge, suspicion, or information of any such right, claim, lien, equity, or demand of said plaintiff or any other person; that since the issuing of said bonds the larger part of them have been taken up and cancelled, to wit: about $100,000 in amount were paid off by proceeds of land sold, about $450,000 in amount were exchanged for bonds of the issue of 1868, (bearing date 24 September, 1867,) about $225,000 in
276 amount were cancelled by land trust-certificates, as hereinafter mentioned, and about $225,000 in amount thereof are still out-

standing and unpaid; that on or about the 13th day of March, 1868, the defendant The Southern Minnesota Railroad Company, for the purpose of raising further funds to construct and equip its said railroad, executed to these defendants as trustees two other mortgages or deeds of trust, bearing date the 24th day of September, 1867, each to secure the bonds of said company to the amount of $3,600,000, all of which bonds were payable to bearer; in and by each of which mortgages or deeds of trust the said defendant The Southern Minnesota Railroad Company conveyed, among other property, to these defendants, as such trustees, the railroad of said company constructed or to be constructed upon or over the line or route of said company, running from the Mississippi River westward through the southern tier of counties of Minnesota, to the extent of one hundred and eighty miles, and also all the lands, tenements, and hereditaments acquired and appropriated, or which should thereafter be acquired or appropriated, for the purpose of a right of way for said railroad to the extent aforesaid, and all the appurtenances and appendages thereunto belonging,
277 and also all the franchises and other rights and property of the said defendant The Southern Minnesota Railroad Company pertaining to said one hundred and eighty miles of road last mentioned; each of which mortgages or deeds of trust contained a condition to the effect that the same should be void upon the payment of the principal and interest of the bonds to secure which such mortgage or deed of trust was executed.

That these defendants thereupon accepted the trust contained in each of said mortgages or deeds of trust by joining in the execution thereof; that each of said mortgages or deeds of trust was thereupon duly recorded in the proper offices of registry in that behalf in the State of Minnesota shortly after the execution thereof as aforesaid, to wit, in some of said counties during or about the year 1868, and in others shortly afterwards.

That simultaneously with or soon after the execution of said mortgages or deeds of trust, and prior to the exhibition of the said bill of complaint, the said defendant The Southern Minnesota Railroad Company issued, negotiated, and sold of the bonds to secure which the first or prior in lien of the said mortgages or deeds of trust of 1868,
278 dated 24 September, 1867, was executed, the amount of $3,340,000, and also issued and sold or delivered on account of construction of the bonds to secure which the second in point of lien of said mortgages or deeds of trust of 1868 was executed, the amount of $1,252,000.

That said bonds secured by the first in lien of said mortgages or deeds of trust of 1868 were all or nearly all purchased and taken by divers persons for their full value, to wit, about or over ninety per cent. of their face, and fully paid for in good faith at such prices, and, as these defendants are informed and believe, without any notice, knowledge, suspicion, or information on the part of such persons at the time of such purchase and payment of any right, claim, lien, equity, or demand of said plaintiff or any other person claiming in similar right to or upon any of the property included in covered by said mortgages or deeds of trust, and, as these defendants are informed and believe, all or nearly all of said bonds are also now held by persons who have purchased and paid for the same for full value and in good faith, without any notice, knowledge, suspicion, or information of any such right, claim, lien, equity, or demand of said plaintiff or any other person.

279 That soon afterwards, and on or about the 1st day of April,

1868, in order to relieve the property covered by the last-mentioned two mortgages from the lien of said mortgage of 1864, or to secure it against the same, the said Southern Minnesota Railroad Company, by indenture of that date, mortgaged or conveyed to these defendants in trust one hundred thousand acres of land or thereabouts, then belonging to said company, which mortgage or deed of trust was also executed and accepted by these defendants and was thereupon duly acknowledged or proved, and was soon afterwards, and before the exhibision of the complainant's said bill, duly recorded in the proper office or offices of registry in said State of Minnesota.

And this defendant Albon P. Man avers of his own knowledge, and this defendant Samuel B. Ruggles believes it to be true, that the last-mentioned deed of mortgage or trust covered and included all or substantially all the lands mentioned in and affected by the complainant's said bill, and save only the portions which had been previously sold and conveyed by said company and these defendants to settlers and
280 others who had purchased and for the most part fully paid for the same in good faith, for full value, and without notice of any adverse lien or claim; that the last-mentioned mortgage or deed of trust recited, as was the fact, that said company had executed 450 certificates of special trust of even date therewith, each representing $1,000 in amount of the outstanding mortgage-bonds of said company, secured by the aforesaid mortgage of 1864; and that it proposed to issue the said certificates in substitution for such bonds to such holders of the bonds as would surrender and cancel their bonds and receive such certificates in lieu and exchange thereof.

That in fact owners of said bonds to the amount of two hundred and twenty-five thousand dollars, or about that amount, did, at or soon after the date of said indenture, surrender their bonds and permit them to be cancelled, and accepted in place thereof the said land trust-certificates, each representing $1,000 in amount of the said bonds, which bonds were thereupon cancelled, and that said certificates are still outstanding and in full force, and secured only by the said indenture of the first of April, 1868, and only upon the said land embraced therein; that the
281 said persons who so accepted the said land trust-certificates purchased and took the same and each of them for full consideration actually paid at the same time in and by the surrender and cancellation of the said bonds for equal amounts, and, as these defendants are informed and verily believe, did so in good faith and without notice, knowledge, information, or suspicion that the complainant or any other person had any right, claim, lien, equity, or demand to or upon any of the lands included in and covered by said indenture and certificates of trust.

These defendants, further answering in manner aforesaid, that is to say, each for himself, and not one for the other, severally deny that at the time of receiving any of the aforesaid grants, mortgages, or deeds of trust, or at any time before the exhibition of said bill of complaint, they respectively had any knowledge, notice, or suspicion of any alleged equities or rights of the complainant or any other holder of said State bonds, or that any of said lands or property was or were held by said State upon any alleged trust, or had been transferred by said State in violation of any such alleged trust. On the contrary, these de-
282 fendants, answering in manner aforesaid, each for himself, and not one for the other, severally allege that at the time of the execution of each of the said several mortgages or deeds of trust, and of the negotiation and sale of and receipt of payment for the said bonds or certificates thereby secured, and until the exhibition of the complainant's

said bill of complaint, these defendants respectively had no notice nor knowledge, information, or suspicion that the plaintiff or any other person had any right, claim, lien, equity, or demand to or upon any of the property included in and covered by said mortgages or deeds of trust or any of them.

And these defendants, answering in like manner, severally deny all and all manner of unlawful combination and conspiracy charged in said bill of complaint, without this, that any matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answerd, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are willing to aver, maintain,
283 and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained.

SAMUEL B. RUGGLES.
ALBON P. MAN.

HENRY J. HORN,
GILFILLAN & WILLIAMS,
Solicitors & of Counsel.

SOUTHERN DISTRICT OF NEW YORK,
State, City, and County of New York, ss:

On this 26th day of March, 1873, before the undersigned, a notary public in and for the State of New York, duly commissioned and sworn, and dwelling in said city, personally came Samuel B. Ruggles and Albon P. Man, two of the defendants named in the preceding answer, and they, being by me duly sworn, did severally depose and say, each for himself, that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be set forth upon information and belief, and as to all those matters that he verily believes the same to be true.

In testimony whereof I have hereto set my hand and seal of office, at New York aforesaid, the day and year first above written.

[NOTARIAL SEAL.] THOMAS J. SANSON,
Notary Public, New York.

284 And afterwards, to wit, on the 25th day of February, A. D. 1873, came the plaintiff, by his said solicitors, and filed in the clerk's office of said court his replication to the answer of the defendants Charles Scheffer, Thomas A. Scott, and William R. Marshall; which replication is in the words and figures following, viz:

285 Circuit court of the United States, district of Minnesota. In equity.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD Company, The Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon P. Man, Charles Shiffer, Thomas A. Scott, William R. Marshall, Horace D. Hall, George I. Senny, and John A. Stewart.

The replication of Selah Chamberlain, plaintiff, to the answer of Charles Sheffer, Thomas A. Scott, and William R. Marshal, defendants.

This replicant, saving and reserving to himself all and all manner of

advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already proved.

286 GORDON E. COLE &
F. R. E. CORNELLE,
Solicitor and of Counsel for Plaintiff.

And on the same day came the plaintiff, by his said solicitors, and filed in the clerk's office of said court his replication to the answer of Samuel B. Ruggles & Albon P. Man, in the words and figures following, viz:

287 Circuit court of the United States, district of Minnesota. In equity.

SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD COMPANY & The Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon R. Man, Charles Scheffer, Thomas A. Scott, William R. Marshall, Horace D. Hull, George I. Senny, & John A. Stewart.

The replication of Selah Chamberlain, plaintiff, to the answer of Samuel B. Ruggles and Albon P. Man.

The repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other master or thing whatsoever in their said answer contained, material and effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things repliant is, and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GORDON E. COLE,
F. R. E. CORNELL,
Solicitors & of Counsel for Plaintiff.

288 And afterwards, to wit, on the 16th day of June, A. D. 1873, came A. E. Mann, one of the examiners in chancery of said court, and filed in the clerk's office of said court the testimony taken before him in this cause as such examiner; which testimony is in the words and figures following, viz:

289 U. S. circuit court, district of Minnesota.

SELAH CHAMBERLAIN
agst.
THE ST. PAUL & SIOUX CITY RAILROAD COMpany, The Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon P. Man, Thomas A. Scott, George I. Seney, John A. Stewart, Horace D. Hull, Charles Scheffer, & William R. Marshall.

Take notice that testimony in behalf of the plaintiff will be taken before H. E. Mann, eqr., one of the examiners in chancery of this court, at the office of the clerk thereof, in St. Paul, on Thursday, the 29th day of August, at 10 o'clock a. m. of that day.

Dated August 19, 1873.

Yours, &c.,

GORDON E. COLE &
F. R. E. CORNELL,
Solrs. & of Counsel for Plff.

To Mess. John M. Gilman, eqr., solr. & of counsel for S. M. R. R. Co., E. C. Palmer, eqr., solr. & of counsel for defendants St. Paul & Sioux City R. R. Co., Thomas A. Scott, George I. Seney, Horace D. Hull, Charles Scheffer, & William R. Marshall, and Messrs. Gilfillan & Williams & H. J. Howe, solrs. & of counsel for defendants, Samuel B. Ruggles and Albon P. Man.

290 (Indorsed:) U. S. circuit court. Chamberlain vs. S. M. R. R. Co. et al.

Stipulated that plff.'s testimony may be taken pursuant to within notice; entry of order & regular service of notice to that effect being waived.

E. C. PALMER,
Sol. for St. P. & S. City R. R. Co. & Scott, Scheffer, & Marshall, defts.
GILFILLAN & WILLIAMS,
Solrs. for Man & Ruggles, Scott, Scheffer, & Marshall.
H. J. HOWE with
GILFILLAN & WILLIAMS,
For Man & Ruggles.
J. M. GILMAN,
Atty. S. M. R. R. Co.

291 United States circuit court, district of Minnesota.

SELAH CHAMBERLAIN
vs.
THE SOUTHERN MINNESOTA RAILROAD COMpany and The Saint Paul and Sioux City Railroad Company et al.

Depositions of Selah Chamberlain, Horace Thompson, E. F. Drake, William L. Banning, Clark W. Thompson, Edmund Rice, John L. Merriam, A. Johnston, and H. H. Sibley, taken before the undersigned, an examiner in chancery of said court, taken at his office in St. Paul, at the times hereinafter specified, and proceedings had before him as such examiner in said suit, as follows:

SAINT PAUL, MINNESOTA, *Thursday, May* 29, 1873.

Plaintiff appeared by Messrs. F. R. E. Cornell and Gordon E. Cole,

his solicitors, and the defendants by James Gilfillan and John M. Gilman, eqrs., their solicitors.

SELAH CHAMBERLAIN, a witness produced on the part of the plaintiff, being first duly sworn, deposes and says:

I reside at Cleveland, Ohio; am the plaintiff in this action. I was in this Territory in 1857. I had business with the corporation
291 known at that time as the Southern Minnesota Railroad Company. The officers of that company were at that time Daniel Wells, jr., president; Benjamin Pringle, vice-president; A. H. Pratt, I believe, secretary, and Don J. Whittemore, chief engineer. None of these, the acting officers of that company at that time, are now, so far as I know, *are* residents of this State. I entered into a contract with that company for the construction of a portion of their road in the winter of 1857 or 1858; don't recollect which. The contract was signed by Daniel Wells, jr., president. Pursuant to that contract I graded on the Minnesota River division 37½ miles, and on the Hokah and Root River division 20 miles, continuous lines of grading on both divisions completed ready for the superstructure. I can't say the date I commenced that work, but I finished it in the fall of 1858 or early spring or summer of 1859. During the time I was engaged in that work I was usually present at the corporate meetings of the directors of that road. I was paid for that work in Minnesota State railroad bonds, the same as set up in the complaint. I received of those State bonds for that work 575 bonds of one thousand dollars each. I re-
293 ceived all the bonds which were issued by the State. I paid out some of those bonds, leaving about five hundred owned by me, and still owned by me. Don't recollect the exact number, but the same as stated in my bill of complaint. These bonds were issued in divisions of ten miles. When ten miles of road was completed and approved by the engineer, $100,000 of the bonds was issued. These bonds were paid to me by the Southern Minnesota Railroad Company on the estimates of the engineers.

(The plaintiff offers in evidence a bond with the indorsements thereon, a true copy of which bond and the indorsements thereon is marked "Exhibit A," and hereto attached. The defendants waive the production of the other bonds described in the bill of complaint, it being agreed that the bonds and indorsements are all alike, differing only in the numbers and dates.)

The indorsement of Daniel Wells, jr., president of the company, was on all the bonds before they were delivered to me. I know Daniel Wells, jr.'s, handwriting; that is his genuine signature to the indorsements. He was acting president of the company at the time these bonds were transferred to me. The company is now and has been for a
294 good many years entirely dissolved. I saw the secretary in Chicago four or five years ago, Mr. Pratt, but have not heard from him since. I do not know whether the records of the company have been destroyed or not. None of the officers now reside in this State. I cannot tell when I last saw the records of the company; not since the closing up of the work. For the grading of the road I was, by the terms of my contract with the Southern Minnesota Railroad Company, to be paid in these Minnesota State Railroad bonds at the rate of $10,000 per mile.

Question. What do you know of any special authority conferred on the president of the company to indorse these bonds by the board of directors?

(Objected to by defendant's counsel as immaterial and incompetent.)

Answer. I was present at a meeting of the board when the president or vice-president, either one, were authorized to indorse the bonds and pay them over to me on my current estimates. They were also authorized to indorse any other contracts, or make contracts, or give other obligations, or execute any other papers that were necessary to be executed
295 during the construction of the work. All of the work was accepted by the company and approved by the engineer appointed for that purpose by the governor of the State. The board of directors of the company knew I had other bonds so indorsed after they were indorsed. I usually attended their meetings, and the board never made any objection to such indorsement by the president, to my knowledge. These indorsements were made at different times, in installments, as the work progressed and as they received from the State. At the time the first installment was paid to me the board of directors knew the president indorsed the bonds and delivered them to me, and so of every installment paid to me; and they were all charged up to me on the books of the company on account of my contract. I had a settlement with the board of directors after my work was entirely done, and in that settlement there was a comparison of the bonds received and charged to me, and a balance struck between all the work done and the bonds received by me. At this final settlement, after crediting me with all the work I had done, and charging me with all the bonds I had re-
296 ceived, there was a balance found due me, which has never been paid. I took some of their first-mortgage bonds on the road for the balance on a compromise. That is all I ever received for that work. I still hold five hundred of these bonds, the number set out in the bill.

No part of the principal on these bonds has been paid, and none of the interest accruing from and after December 1, 1859.

Question. During the time that you were doing this work, who furnished the financial resources of this company, not only for grading, but for right of way and other purposes for building this road?

(Objected to by defendant's counsel as immaterial and irrelevant.)

Answer. I furnished the most of it.

Question. What do you know about the company having the right of way over the land on which the grading was done, or permission to construct the road given by the different owners?

(Objected to by defendant's counsel as immaterial and incompetent.)

Answer. The company had a right-of-way agent, one Mr. John-
297 son I believe his name was, who was employed to obtain the right of way on these two divisions. He got some contracts and some deeds and donations, and in other places we got a permit to go on and construct the road, the right of way to be settled afterwards. I do not know of any instance in which we went on to the land without a deed, contract, or permit. I remember some instances where we were stopped from going on to land to grade until we got a permit; but in those instances it was afterwards arranged so that we got a permit and went on and did the grading. These contracts, vouchers, deeds, and right-of-way papers were delivered over to me by the right-of-way agent as vouchers for the money I advanced to secure the right of way. Those contracts were delivered over to the company on my final settlement with the company, and the amounts I advanced credited to me on their books as so much cash.

I was here in 1857. I was not here at the extra session of the legislature, in the spring of 1857. The lines of these roads were definitely located and the maps filed in July, 1857. It was so throughout the entire line of the Southern Minnesota Railroad at that time, which in-

298 cluded the Root River division and the Minnesota River division. I don't recollect the date I commenced work on these roads; it was after the 15th of May, in 1868, within sixty days after that date. It was within sixty days after the adoption of the constitutional amendment. I finished in the next year, 1859. Where I graded was on the located line, under the direction of the company's engineer.

SELAH CHAMBERLAIN.

Examination adjourned until Friday morning, May 30, 1873, 10 a. m.

FRIDAY MORNING, *May* 30, 1873.

The plaintiff appeared by Mess. Cornell and Cole, his solicitors, and the defendants by Mess. Gilfillan, Gilman and Palmer, their solicitors, and after signing a certain stipulation, which is marked "Exhibit B," and hereto attached as an agreed statement of facts, with certain copies of deeds therein referred to, which are hereto attached, marked Exhibit "C," "D," "E," and "F," and also hereto attached, adjourned until June 10, A. D. 1873, at 10 o'clock a. m., to take the testimony on the part of both plaintiff and defendants by consent and mutual agreement.

299 JUNE 10, 1873.—Adjourned until June 11, 1873.

JUNE 11, 1873.—Parties, by their solicitors, present. Adjourned until June 12, 1873, at 9 o'clock a. m.

JUNE 12, 1873.—Parties, by their solicitors, appeared.

HORACE THOMPSON, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

I reside in St. Paul, Minn.; have resided there thirteen years; have been engaged in banking business, and have also been railroading some. I have been connected and interested principally in the Minnesota Valley Railroad, now the St. Paul & Sioux City. Was the first president of the company under the reorganization of the company under the act of March 4, 1864, and have been a director ever since. I have been a stockholder in that company all the time. This company was organized for the building of that road early in the year 1864; have been actively engaged in building the road up to the time of its completion—the company have. I have been one of the active managers of the company ever since its organization. That company have constructed about one hundred and twenty miles of road, and now have it in full operation. I
300 can only approximate the cost. I should say at approaching $30,000 per mile, including equipment. The company commenced the construction of the road, I think, in 1865, though some preparation was made in 1864. I speak from recollection only. Can't state with certainty when it was completed—in 1870 or 1872—to St. James. From the organization of that company, Mr. Burbank, J. C. Burbank, E. F. Drake, H. H. Sibley, John S. Prince, John L. Merriam, J. E. Thompson, during his life-time, Wm. F. Davidson, Charles H. Bigelow, Russell Blakely, T. A. Harrison, H. G. Harrison, Wm. M. Harrison, J. W. Pence, Clark W. Thompson, have been associated with me in building the road from the commencement. There were also some Eastern parties. Others have been connected with us, who have since gone out. Those are all I recollect who were associated with us at the commencement.

Question. At the time of the organization of your company, or at any

time while constructing the road, had you or the company any actual notice or knowledge that any claim or lien upon any of the franchises, road-bed, or lands, or other property or rights referred to
301 the act under which the company was organized, of March 4, 1864, by virtue of holding any of the Minnesota State railroad bonds mentioned in the bill, or otherwise?

(Objected to by plaintiff's counsel as incompetent and immaterial and irrelevant.)

Answer. I never knew or heard of any such claim. I am a stockholder in the road to the amount of two or three hundred thousand dollars. I have not paid in less than three hundred thousand dollars in cash, for which I hold stock. The common stock of the company amounted to $2,400,000. There has been in the neighborhood of $1,600,00' of preferred stock issued. I hold between two hundred thousand and three hundred thousand dollars of common stock.

Question. Did you and your associates take hold of this enterprize and carry it through upon the belief and faith that it was entirely free and clear of all liens and claims whatsoever?

(Objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial.)

302 Answer. We did.

Question. Would you have taken hold of the enterprize or put money in it if you had known or supposed that the plaintiff or any one else had or claimed to have any such lien upon the lands, franchises, or property of the company as is claimed by the plaintiff in this action?

(Same objection.)

Answer. Undoubtedly not. I am acquainted with the plaintiff, Selah Chamberlain. I became acquainted with Mr. Chamberlain soon after I came to the State. It must have been in 1860 or 1861.

Question. Has the plaintiff, Mr. Chamberlain, been frequently in this State, and concerned in and connected with the land-grant roads under the act of Congress of March 3, 1857?

(Objected to same as above.)

Answer. He has been frequently in the State; can't say with how many of the roads he was connected with or interested in. He was prominently connected with one, the Minneapolis and Cedar Valley Railroad, and subsequently changed to the Minnesota Central
303 Railroad, and now known popularly as the Milwaukee and St. Paul Railroad Co.

Question. Did you ever have any conversation with the plaintiff, Mr. Chamberlain, with reference to the construction of the line of road constructed by your company, or the Southern Minnesota Railroad Company, and the legislation under which said roads were constructed, and the rights of the companies thereunder? If so, state when and what it was, and what claims, if any, he made upon the lands, franchises, or property of said companies, or either of them.

(Objected to by plaintiff's counsel as incompetent and irrelevant.)

Answer. I have had several conversations with Mr. Chamberlain relative to the construction and progress of the Minnesota Valley, now the St. Paul & Sioux Cit , Railroad. The first conversation which I recollect about was in 1864, when I was president of the company, and before we commenced the work. It was either in Washington or New York—that is my strong impression—either pending our efforts to get an additional grant or very soon afterwards. It was before any money
304 was paid in on the stock, except perhaps a nominal payment, but none for the construction of the works. It was in the spring of

1864, I feel very confident. In that conversation I do not recollect any discussion between Mr. Chamberlain and myself about the validity of the legislation under which we proposed to act. But I remember very distinctly that Mr. Chamberlain expressed himself as being very much gratified that the franchises of the Southern Minn. and Root River Valley Company had been divided, as it probably secure' the building of both roads; that he was glad the Minnesota Valley enterprize was in so good hands. He expressed his hearty good-will and encouragement. He encouraged us to go on and state as a reason, among other things, that when these land-grant roads were completed the State could no longer have any reasonable excuse for not paying his demands on these bonds which he held for work which he had done; that is, these Minnesota State railroad bonds. On more than one occasion since, Mr. Chamberlain has expressed to me the same views during the progress of this road, and in no case has he given to me an intimation that he held a claim or lien of any kind upon the lands, franchises, of
305 property of said companies or either of them. I do not recollect of ever having any conversation with Mr. Chamberlain in regard to the rights of the companies under the legislation of 1864 or any other time.

(To that part of the above answer relative to the payment of money in upon the stock subscribed before the conversations testified to, plaintiff's counsel further object as being immaterial and not the best evidence.)

I cannot answer with certainty as to the number of these conversations. I think I must have met Mr. Chamberlain several times here each year, or in New York each year, and had various conversations with him about the progress of the work and the probabilities of the prospective payment of the bonds by the State, but I cannot tell how many times.

Question. When did you first learn that the plaintiff claimed that the Minnesota State railroad bonds which he held were a lien upon the franchises or lands or property, or any of the same, which your company or the Southern Minnesota Railroad Company received from the State by the legislation of 1864?

306 (Objected to by plaintiff's counsel as immaterial and irrelevant.)

Answer. I cannot give dates, but the first intimation was shortly before the commencement of this suit. It was after the completion of the road to St. James.

Cross-examination:

I was in this State in 1860, residing in this city. I must have had some knowledge of the foreclosure of the trust-deed of the Southern Minnesota Railroad Company by the governor that year at the time, but do not recollect of it now. I must have known, as an item of information, that something of the kind was going on. I was a stranger and had no interest in it. I don't think the firm of which I was a member ever held any of these bonds. I had a general idea that the State had foreclosed and held these franchises.

Question. During the session of the legislature in the winter of 1864, prior to the passage of the act of March 4, 1864, did not you have a conference at the International Hotel with E. W. Cutler, Mr. Ingersoll, F. R. E. Cornell, Mr. Morrison, (then a member of the senate,) E. B. Ames, and also Dr. Luke Miller and others, claiming to represent
307 the interest of the Root River line, in regard to the then condition of the franchises pertaining to the Root River line and the Minnesota Valley line, and as to whether the franchises pertaining to those two lines could be separated, and as to whether parties from this place,

Minneapolis, and the Root River Valley could harmonize upon legislation satisfactory to these different parties and interests and to the division of these franchises?

Answer. I do distinctly recollect such a meeting as that, but I can only remember the main object of the meeting; that was to harmonize the interests of Mr. Miller and his friends and those of parties from this section of the State desiring the building of the Minnesota Valley line, so as to secure the division of the franchises. We were desirous of securing legislation at this time, such as would encourage the building of the Minnesota Valley line. Dr. Miller was the Luke Miller named as a corporator in the act of March 4, 1864, and named also in the acts relating to this road of 1861, 1862, and 1863. I presume I knew the fact that there had been legislation in regard to it in each one of those years.

308 Question. At this conference and during this session of the legislature, while this act of 1864 was pending and under consideration, was not the prior legislation relating to that road and the character of it a subject of frequent conversation?

Answer. I do not recollect whether the prior legislation was a subject of conversation at that interview or not, and I have no distinct recollection of the matter outside of the interview referred to. I would give it as my opinion that the prior legislation was referred to frequently at a greater or lesser extent. I was not much at the capitol during the pending of this former legislation.

Question. Do you know the fact that the State foreclosed on all the land-grant roads, and by new legislation gave out the franchises to other parties?

Answer. I do. I can only say I became acquainted with them at the time this legislation was pending, in 1864. I was one of the trustees of the St. Paul & Pacific Railroad Company, in one of its mortgages; it was the branch line, and part of the main line from St. Paul to Watab.

309 I think that mortgage must have been executed in 1862 or 1863, and in that mortgage S. J. Tilden Edmund Rice were the other trustees.

At the time of the legislation of 1864, and prior to it, I knew that the land-grant companies had received a loan of the State's credit, for which State bonds had been issued to them. I knew that those companies had given a mortgage on their lands and franchises to secure the payment of these bonds, and I knew that the companies had defaulted in paying those bonds, and that the State had foreclosed and bid in the lands and franchises. And I knew that the State determined to hold those lands and franchises under this foreclosure at the time of the legislation of 1864. I knew, also, that the State had not paid the bonds. I suppose I was aware of all important action of the State in reference to the payment or non-payment of these bonds. I knew that these bonds were outstanding, and some of them in the hands of third parties at the time of the legislation of 1864. I don't recollect exactly their commercial value at that time; it was very low—from seventeen to twenty-five cents on the dollar in limited quantities. The transactions were light in them. I was aware of this depreciation in

310 value. One cause was the default up to that time in the payment of the interest and the somewhat depressed state of affairs in the State, caused by the breaking down of railroad enterprises, and the action of the State in regard to requiring the question of their payment to be submitted to the people. All other Minnesota State bonds were at par except these. The people argued that, owing to the depressed state

of affairs, that it would be a long time before the people would consent to their payment It was feared that it would be a long time before the politicians would consent to the payment of these bonds. I supposed the amount of these bonds outstanding was about $2,000,000, or thereabouts. I understood that Mr. Chamberlain had done most of the original grading on these roads and taken his pay in these bonds. At the time of this legislation of 1864, it is impossible for me to state what I then understood the amount of bonds he held was. I must have had an idea at that time that he held a large amount of bonds, and what that amount was. All my associates mentioned in the act of 1864 were residents of this State. I presume they were, with myself, familiar with the
311 history of the transactions relative to these State railroad bonds. In 1864, and since that time, I have, to some extent, had business with railroad and commercial circles in Wall st., New York. Among all railroad or financial men interested in Minnesota enterprises the history of these transactions was generally known, and among people generally the neglect to pay her bonds was known and the subject of criticism, but not to such an extent at that time as subsequently. During the years that I have been here I have always taken the daily papers of St. Paul.

Question. Do you not remember an article which appeared in the Daily St. Paul Pioneer, purporting to be signed Lafayette Emmett, late chief-justice, prior to the legislation of 1864, in which the same claim was made as that in this suit, that the holders of State bonds had an equitable interest in the lands and franchises foreclosed and bid in by the State, which they could and would enforce against any parties taking from the State, with notice, actual or constructive, of such trust or interest?

Answer. I do not recollect the article. I have heard that he
312 expressed views in substance that the claim might be enforced against parties taking from the State, but I do not recollect when. I and my associates did not pay anything to the State for this grant. Mr. Chamberlain, in his conversation with me, expressed a solicitude for the payment of the bonds held by him, in which expressions I cordially sympathized. We obtained an additional land-grant to the grant of 1857. It was in 1864. We procured an additional grant of four sections per mile. There was a large deficiency in the original grant after taking the alternate sections within the 15 miles limit. There is still a considerable deficiency on the whole line. There is one hundred and eighty-seven miles of this land-grant road in the State. We mortgaged the road and lands to raise money to build the road. All the line of road is covered by these mortgages. I think there are some of the lands not covered. The principal part of the lands are covered by these mortgages. The preferred stock bears interest at eight and ten per cent., secured upon the road and most of the lands. The preferred stock amounts to about $1,500,000. Of the money I have advanced, perhaps about one-third has been on the preferred stock.

HORACE THOMPSON.

313 E. F. DRAKE, a witness on the part of the defendants, being first duly sworn, deposes and says:

I reside in St. Paul, Minn.; have resided there since November, 1864. Since I have been there my main business has been performing the duties of president of the St. Paul & Sioux City Railroad Company. My first connection with the Minnesota land-grant roads was in 1861. I contracted to complete the incomplete road between St. Paul and St. Anthony, then called Minnesota & Pacific Railroad, now the first

division of the St. Paul & Pacific Railroad. That was one of the land-grant roads under the act of Congress of March 3, 1857. That was the first piece of road completed in the State. In the summer or fall of 1864, I was first connected with what is now known as the St. Paul & Sioux City Railroad. I have been president of this road ever since, and have taken an active part in its construction and management as president. Work was first commenced on that road in the fall of 1864, and a section has been completed every year until completed. It has been continuously prosecuted. One hundred and twenty-one miles of main line has been built by the present company, at the cost of about a little
314 over $4,000,000 standing on the books.

Question. What amount have you invested in the road?

(Objected to by plaintiff's counsel as immaterial.)

Answer. Over $200,000.

The company was organized and the road constructed under the act of March 4, 1864, found on page 147 of the laws of 1864, being chapter one of special laws of 1864, and chapter two of said act, being the portion which relates to the company of which I am president. I was not here when that act was passed, and had nothing to do with its passage.

Question. At the time you became connected with the St. Paul & Sioux City Railroad, as you have stated, had you, or any member of the company, to your knowledge, any actual notice or knowledge that the plaintiff or any one else held or claimed a lien upon any of the franchises, lands, or property granted or pledged to your company by said act of March 4, 1864, by virtue of the ownership of Minnesota State railroad bonds, or otherwise?

(Objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial.)

315 Answer. I had no knowledge and never heard of any such claim being made.

Question. When did you first learn that the plaintiff asserted the claim now set up in the bill in this action?

(Same objection.)

Answer. I do not remember having heard of it until about the time of the commencement of this action.

Question. Did the plaintiff ever notify or claim to you, as president of said company, or any other member or officer of said company, to your knowledge, that he had or claimed any such lien upon the property and franchises of the company as is set up in the bill in this action prior to the commencement of the action?

(Same objection.)

Answer. He never gave any such notice to me or to the company, or any member of it, to my knowledge.

Question. Did you or the company know of his making any such claim until the commencement of this action, or about that time?

(Same objection.)

Answer. I did not know that he or any one made any such claim until about that time.

316 Question. Did you and your associates undertake the construction of this road upon the faith and belief that the franchises, lands, and property granted and pledged by said act of March 4, 1864, under which the company was organized, were entirely free from all liens and incumbrances of every kind whatsoever, and was the road prosecuted to completion under that belief?

(Same objection.)

Answer. We commenced the work believing the franchises and property were entirely free from any prior claims, and so prosecuted the work to completion.

Question. Would you have taken hold of the enterprize if you had known of any such lien or claim as the plaintiff now sets up?

(Same objection.)

Answer. We would not.

Question. At the time you took hold of the enterprize, or thereabout, what inquiries were made or investigation had, if any, by the company as to the legality of said act of March 4, 1864, and as to whether said act would secure to the company all that it imported to do, and what conclusion was arrived at?

(Same objection, and further, that the inquiry is not limited to the proper time.)

317 Answer. I think it was before I became connected with the company, or about that time, the company called on Mr. Attorney-General Cole, (not as attorney-general,) to professionally examine the laws relating to the company and the proceedings by which the State acquired title, and give it to the company, and Mr. Cole gave the company his opinion, sustaining the action of the State, pronouncing the action regular and the property clear of incumbrance. The opinion of Gen. Cole was in writing. I have not that opinion with me. (Copy of the opinion is to be produced and hereto attached as part of witness' answer.)

(Plaintiff objects to all statements of the witness as to the contents of the opinion as not the best evidence.)

Witness continues: I also consulted Judge Chatfield on the same general points, on behalf of the company and for my own information, and he gave the opinion that the legislation was legal and the title good in the company, free of all claims. My recollection is that I had a conversation less formally with Mr. Cornell. I do not recollect the conversation with Mr. Cornell particularly, but I do remember that no doubts were thrown on the regularity of the proceedings or the title of the company. I am acquainted with the plaintiff, Mr. Chamberlain.

318 I can scarcely remember when I first became acquainted with him; have known him since a boy, and known him well since 1861 or 1862. I think my first conversation with Mr. Chamberlain about railroad matters in Minnesota was about January, 1862. My recollection is that it occurred in a stage-coach between here and La Crosse. I think Mr. Winters or Harshman was with us—I think Mr. Harshman. I had been here the preceding summer, and had entered into a contract to complete the railroad between St. Paul and St. Anthony, but had not gone on with the work on account of further legislation which we supposed to be required. I was then coming to aid in getting the legislation required—to look after my interests in that connection. Mr. Harshman or Mr. Winters was coming on the same business.

Question. State the conversation.

(Objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial.)

319 Answer. It is difficult for me to locate any particular conversation with Mr. Chamberlain, as almost always when we have met we have talked over Minnesota railroad matters, State bonds, &c. I told Mr. Chamberlain, either in the coach or about that time after we got here, what we had contracted to do, as I knew he had been interested in Minnesota railroads. He expressed a deep interest then and always in the success of the roads. I told Mr. Chamberlain at the

time that we required legislation before we could go on, and that we were waiting the action of the legislature to give us that legislation. I am unable to give the precise words, but Mr. Chamberlain expressed gratification that we were going on, and intimated that it would be a good enterprise financially; otherwise that it would be a good thing.

During the pendency of this legislation, Mr. Chamberlain proffered his sympathy and offered to aid us what he could to secure it. I remember distinctly Mr. Chamberlain's saying that the State was wholly unable to finish the roads which it had acquired, and the policy of the State granting the lands and franchises to companies to complete the roads before the grant should expire was wise, and necessary to enable the State to pay her railroad bonds; that it would so increase her population and wealth that she would be able to pay them, and he ex-
320 pected it would be done. Mr. Chamberlain and I met frequently during that winter, though I don't remember that we had very frequent conversations. I had no business relations with Mr. Chamberlain. We met simply as acquaintances. I remained here all winter. I don't remember how long Mr. Chamberlain remained. Mr. Chamberlain has been in the State quite frequently since, and I have met him quite frequently elsewhere. When I took charge of the Minnesota Valley Railroad, in 1864, the Minnesota Central Railroad was in construction. Mr. Chamberlain was, I believe, president of the road; at least he was actively interested in it. Our roads crossed each other at Mendota, and this brought us occasionally in contact. I think Mr. Chamberlain called at my office to see me when he was in town, almost always. The company of which Mr. Chamberlain was the president and active manager went on and completed the Minnesota Central Railroad. These two roads had running arrangements as they approached completion. We built the road from Mendota to West St. Paul under an arrangement by which we did their business. When the bridge was built over the river there we took the whole in partnership. The Minnesota
321 Central Railroad Company, of which the plaintiff was president, is now popularly known as the Milwaukee and St. Paul Railroad. I have had conversations with Mr. Chamberlain since I became president of the St. Paul and Sioux City Railroad Company in regard to railroads.

Question. State those conversations as they occurred?

(Objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial.)

Answer. Soon after I became president of the Minnesota Valley Railroad, I think the first time Mr. Chamberlain was in the city after I became president, I met him and received from him general expressions of congratulation or pleasure that we were going on with the work. I can't remember any particular times when we had other conversations, but we met frequently, and the conversation generally turned to railroad matters, and more latterly to the Minnesota State railroad bonds, which he felt anxious to have paid, and in which I sympathized with him and sustained him. I don't remember that he stated how he expected these bonds would be paid. He always expressed himself
322 in full confidence that the State would ultimately pay them, and once or oftener said to me that when the roads were built the State would be able and the people would be willing when they got what the bonds were given for building. In no one of these conversations did he ever intimate that he had any claim upon any of the property or franchises included in the act under which we were operating for the payment of these State railroad bonds, or anything else. He knew we were going on. I don't know that he was ever up along the

road while we were at work on it. I met him occasionally out of the State during these years in Ohio or New York. We most always when we met talked over railroad matters in Minnesota.

Cross-examination:

I was educated as a lawyer. I practised law before I went into railroad business. When I came out here in 1862, to build this road from St. Paul to St. Anthony, I did not examine into the history of these land-grant railroads. I knew that they were bankrupt, and had been foreclosed upon. Prior to my
embarking in the enterprize of building the St. Paul & Sioux City
323 Railroad I did not inquire into the legal aspects of the title to that road. In my connection with building the road between St. Paul and St. Anthony I had learned something of the history of the title and legislation respecting the land-grant roads, more especially that one. I never made any personal examination of the history of the legislation in regard to that road between St. Paul and St. Anthony before I entered into the contract. I saw the act of 1861 in reference to St. Paul & Pacific road vesting the franchises in Mr. Rice and his associates; or, rather, I don't know that I saw it, but became acquainted with its provisions through others. The old act of 1861 required a deposit of security, and I first learned the State railroad bonds were not good there when we offered them for security, and the State would not receive them. I was aware in 1864, when I took hold of this enterprize, that the State railroad bonds were unpaid, and understood that Mr. Chamberlain held a considerable portion of them. I was also aware that the old railroad companies had given the State a mortgage of their lands and franchises to secure the payment of these bonds, and
that default had been made and the mortgage foreclosed and the
324 State bid in the property.

The various conversations which I had with Mr. Chamberlain were not business conversations, but casual conversations, discussing railroad matters. I did not inform Mr. Chamberlain of my intention of becoming a member of the St. Paul & Sioux City Railroad Company before I became a member of it. I may have informed him before I actually became a member, but not before I made arrangements to do so. I met Mr. Edmund Rice in New York, in June, 1861, and it was at his solicitation that I entered into the contract to build the road between St. Paul and St. Anthony. He simply told me had the charter and was looking for some one to build the road, and especially the ten miles, the first division, which was to be built that year. We did not enter into a contract then in N. Y., but I agreed to enter into a contract to build the road if we found everything as represented. I don't remember that he showed me a copy of the charter then. I may have seen the act of 1861. I think probably I did. I knew the provisions of that act. I entered into a formal contract
in July—myself, Harshman, and Winters. I have no recollection
325 of his showing us a compilation of the acts with reference to the roads. We took his statements; he appeared a fair man, and stated the matter very clearly. I think we made the deposit before we executed a definite contract. I did not at that time examine into the history of the road or the legislation in regard to it. We were advised that as the matter stood in 1861 there were claims against the road; it was not free from all claims. I think the claims were made by the trustees of the first-mortgage bonds against the old company, claiming that they had some of the bonds which Mr. Rice, the president, failed to get cancelled as he had promised. We then declined to go on with the work until that cloud was removed. We were advised that by the

terms of the constitution *that* after the 1st of January, 1862, the property would all belong to the State by forfeiture or otherwise, and I came back in 1862 to see that legislation was had, so that we could go on with the work. We waited until we were advised the cloud was removed and we could get a clear title. We postponed the work in 1861
until the forfeiture in the constitution should take effect, expect-
326 ing legislation in 1862 which would permit the company to go on
free from any incumbrance. I was here during most of the session of 1862, waiting the action of the legislature on that subject. I saw the act of 1862, was in the legislature during the discussions of the bill, and conversed frequently with Mr. Rice about it. There was no controversy about the provisions of the act, but the controversy was as to who was to control it. The opposition was against Rice and the old company. There were a great many amendments proposed to the bill during the controversy, and I was frequently consulted as to whether this or that amendment would impose burdens upon us which would prevent our building the road as contractors. The amendments were directed against Mr. Rice's party, and to keep the control of the matter in the State, as there was a distrust of their ability to go on. I think there were amendments proposed and discussed affecting the value of the franchises, upon which I was consulted. I suppose the acts in relation to the other roads were discussed and passed that winter; but be-
yond the Winona & St. Peter road I had no interest in them
327 and paid no attention to them. During that winter I read the
constitutional amendment, but paid no attention to the previous legislative enactments in regard to these roads. It was generally conceded that the roads were forfeited to the State and the State held the franchises and property, and no one suggested any doubt about it. The railroad bills were all kept along together in the legislature that year.

Redirect examination:

We presented some of these State railroad bonds to the State for security and they were refused. Mr. Harshman, who was a partner with Winters and myself in this contract, was the owner of some six or seven thousand dollars of these State railroad bonds, and it being a part of our agreement with Mr. Rice that we should put up the ten thousand dollars security required the act of the legislature, *and* we brought the bonds believing they would answer the requirements of the law. We knew the State was not paying the interest, but supposed they would answer our purpose, and we got from Mr. Thompson the balance in good
to make up the ten thousand dollars and took it to the treasurer to get
a receipt, and then learned from the treasurer and lieut. governor
328 that it was no go. They simply said that they were not a bond
which would meet the act of the legislature.

Recross-examination:

Whether Harshman was here at the time we went to make the deposit. Mr. Winters went to make the deposit. I did not see the treasurer. I went with Mr. Winters and Rice to see Mr. Donnelly to remonstrate and see why these bonds would not answer. I knew they expected to use the State railroad bonds in making up the deposit. I knew the amount of the railroad bonds they were going to take and the cash to make up the balance. I had no discussion as to the amount at which these bonds should be received; at that time I did not know any of the particulars about these bonds, did not know their par value. I knew the interest was not paid.

E. F. DRAKE.

Examination adjourned until June 14th, 1873, at 9 a. m.

JUNE 14, 1873.—Parties appeared by their solicitors.

WILLIAM L. BANNING, a witness produced on the part of the
329 defendants, being first duly sworn, deposes and says:

I reside in St. Paul, Minn.; have resided there about nineteen years. I was a member of the legislature of Minnesota, of the house, in 1861. I am acquainted with Mr. Chamberlain, plaintiff in this suit. I first became acquainted with him about twelve years ago. I have been in the habit of seeing him since once a year, and often twice or three times a year. I met him frequently during the sessions of the legislature, and once or twice in the East, I think. I am familiar with the companies commonly known as the land-grant railroads, to whom the State railroad bonds were issued, to the extent of knowing the lines, the names of the companies, but not at all times the names of the members composing the companies.

Question. Have you ever had any conversations with Mr. Chamberlain, after the year 1860, relative to the construction of the lines of any of said railroads; and, if so, when and where and under what circumstances?

(Objected to by plaintiff's counsel as immaterial.)

Answer. The first interview which I recall with Mr. Chamber-
330 lain in which this subject was discussed was after the election in the fall of 1860. I was East and returned home by the way of Cleaveland, and met Mr. Chamberlain there. He expressed much anxiety that the roads should be got into such shape by legislation that they could be built. Mr. Chamberlain, as I recollect it, was willing and anxious to build the road making the St. Paul connection with the eastern lines, or aid in building it; that is, taking portions of the road of such lines as would give a continuous road making connection with eastern lines. That was all he was anxious to aid personally in building. He expressed more or less anxiety, of course, about the payment of interest on his bonds; for the legislature to take some action providing for the payment of the interest; and I left there with the impression that he would be up at the session of the legislature which was to convene in January following the time I was referring to. I did not see him again until just about the adjournment of the legislature or just immediately after the adjournment, and I am
331 not sure which. Well, I have had conversations with Mr. Chamberlain, at various times when he has been here during the sessions of the legislature. My impression is that he has been here, with the exception, possibly, of three sessions, at every session of the legislature since. I will not be certain about this; he may have been absent at more sessions than this. I think he was here during the session of the legislature in 1862. I had conversations with him that session. Yes, I have always, when we met, had conversations more or less about these bonds and railroads, and I think so that year, for it was culminating towards some action at that time. To sum up the results or conclusions of these conversations, I would say he always expressed great anxiety to have the legislature make provision for the payment of his bonds, and that the roads should be completed and the resources of the State developed and built up. That was repeated many times in subsequent conversations with him in subsequent years. At the time of the first interview with Mr. Chamberlain I was then a member of the legislature elect. Mr. Chamberlain knew that fact at the time. My term extended from 1st January, 1861, during the ses-
332 sion. During the time I was member of the legislature there were bills introduced in regard to the bonds and to the railroads.

During the session several bills were passed turning over the land-grants to different organizations. The land-grants were all subsequently forfeited and returned again to the State.

Question. What was the general nature of the propositions before the legislature, when you were a member, in 1861, in reference to the construction of these lines of road, or any part of them?

(Objected to by plaintiff's counsel as incompetent and immaterial, the plaintiff not being connected therewith.)

Answer. One proposition was to unite the construction of the roads with the settlement of the State railroad bonds, by providing that as the roads were built the bonds should be returned for cancellation, and new bonds issued by the State in lieu of those thus taken up. Another proposition was to divide the bonds entirely from the railroads and settle each question separately. The majority of the legislature came to the conclusion that the latter was the better way to get through
333 with the difficulty. I did not see Mr. Chamberlain until the very last days of the session, or immediately after. When I saw him I gave him a sketch of what had been done. I saw him at this time only a few minutes.

During the session of the legislature I regarded Mr. Shepherd as the representative of Mr. Chamberlain. He was an engineer who had been connected with the works. I think he wrote to Mr. Chamberlain to come on. He was anxious to have Mr. Chamberlain here.

Question. Did Mr. Shepard profess to be acting for Mr. Chamberlain?

(Objected to by plaintiff's counsel as incompetent.)

Answer. He did, to the extent of looking after what he considered Mr. Chamberlain's interest, both in the railroads and bonds. Of course I did not understand him to have any power to bind Mr. Chamberlain, only to represent him in the different questions which came up before the legislature relating to the railroads and bonds.

Question. State whether or not you had any conversation with said Shepard during the session of the legislature of Minnesota, in
334 1861, in relation to the interests he professed to represent of Mr. Chamberlain, connected with these roads or any part of them.

(Objected to by plaintiff's solicitors as incompetent.)

Answer. Yes.

Question. State when and where, and under what circumstances, and what the conversations were.

(Same objections.)

Answer My intercourse with Mr. Shepard extended over the entire session. Mr. Shepard claimed to be there looking after the interests of Mr. Chamberlain; and in the absence of Mr. Chamberlain I regarded him as being the proper man to talk to as to Mr. Chamberlain's plans, purposes, and so on. So far as Shepard was concerned, it came back to the same condition I spoke of in regard to Mr. Chamberlain, anxious to have the bonds provided for and the roads built. I think he favored the plan of coupling the building of the roads with the payment of the bonds as long as that proposition had any strength, but when it became impracticable, then he favored the building of the roads, and was
335 very anxious that they should be built. He gave about the same reasons that Mr. Chamberlain did for favoring the building the roads, that the State would be developed, in a position to pay the bonds. I was here at the time of the foreclosure of the mortgages by the governor; was present at the sale—the first sale; can't recall which of the roads. It was when the injunction had been applied for, and the gov-

ernor sold notwithstanding the injunction. It was the St. Paul & Pacific Railroad, I now recollect. I have also heard of the foreclosure and sale of the other roads by the governor.

Question. In any of your conversations with Mr. Chamberlain, to which you have referred, was any reference made to any of these foreclosures by the governor?

(Objected to, that so far as referring to any other foreclosure than the Southern Minnesota Railroad, it is immaterial and incompetent.)

Answer. Yes.

Question. Upon what line of road?

(Same objection.)

Answer. Can't answer as to what road. Mr. Chamberlain regarded the sale of the roads by the governor as one of the necessary
336 steps to be taken to secure the construction of the roads and development of the State, which should result in the settlement of the bonds held by him. That was the constant theme of Mr. Chamberlain, and run through all our conversations. I think that Mr. Chamberlain in these conversations regarded Mr. Shepard as representing him to the extent certainly of keeping him posted, but not with the power to bind him. That was clearly their relations as I gathered them both from Mr. Chamberlain and Mr. Shepard.

Question. State whether or not in any of the conversations with plaintiff referred to by you, the plaintiff claimed any lien upon, or interest in, any of the lands, franchises, or property appropriated for the building of the said land-grant railroads, or any of them, by virtue of being an owner of Minnesota State Railroad bonds or otherwise, or intimated that he looked to any other source for the payment of his said bonds than the general resources of the State of Minnesota.

(Objected to by plaintiff's counsel as incompetent or irrelevant, the witness not being connected in any way with any of the defend-
337 ants or any of the companies.)

Answer. In the conversation at Cleaveland, (that was before any legislation was had in regard to disposing of the questions,) he talked considerably about provision being made for the payment of the bonds, levying a tax, &c., when the legislature came together, (that was while I was a member-elect,) and urged that it was essential to have the roads built as a means of securing the ultimate payment of his bonds. At that time it was not known what course the legislature would take, and the bonds were unquestionably a lien upon the grant, and the two questions, the settlement of the bonds and building of the roads, were connected together. Now, in the various conversations I have had with Mr. Chamberlain since that time, I don't remember that he claimed any liability on the part of the railroad companies, except conversations or information derived from him recently, since the commencement of this suit. I don't remember of his making any claim of any lien upon the lands or franchises of those roads until recently.

Cross-examination:

338 Question. After your conversation with Mr. Chamberlain at Cleveland, when did you first hear from any source the suggestion that the State railroad bonds were a lien upon the lands and franchises of these different lines of road?

(Objected to by defendant's counsel as not cross-examination, unless confined to communications from the plaintiff, and as incompetent, immaterial, and irrelevant.)

Answer. There was a theory and a discussion during the session of

the legislature at which I was a member, and since, as to whether the lien of those bonds would be discharged by the sale under the legislature providing for the foreclosure, a great deal of discussion. Some claimed that it was discharged, and others that it was not, all sorts of theories, whether the franchises were merged, whether the State could hold them and the lands as assets, and turn them over or not. These questions were mooted and discussed during the legislature of 1861, and also during the session of 1862. In fact when any proposition was up to raise a tax or provide means for the payment of these bonds,
339 members who wanted to get rid of it have sought to turn the liability over to the railroad companies.

Question. Do you recollect of an opinion of Judge Emmett's published during one of those discussions, in which the claim that those bonds were a lien upon the roads, lands, and franchises, and which could be enforced against the present companies was asserted and advocated?

(Objected to as incompetent, immaterial, and irrelevant, and not proper cross-examination.)

Answer. I remember the opinion of Judge Emmett, of seeing it in the newspapers; that was the tenor of it. Don't remember the time the article appeared. It was several years since.

Question. After the foreclosure and before Mr. Chamberlain's becoming a stockholder in the Minneapolis, Faribault and Cedar Valley Railroad Company, did you know of his knowing or having any interest in any of the land-grant lines of road or the old companies, other than what grew out of his ownership of the State railroad bonds?

(Objected to by defendant's counsel as incompetent, irrelevant, and immaterial)

Answer. No, sir; I do not. I know nothing of his relations to
340 the roads as a stockholder. I never heard him make any claim other than that.

Question. You have spoken of two policies in reference to the disposition of these railroad franchises that were under discussion during the session of 1861, when you was a member. Was not the result of the legislation of that year the passage of the acts known as chapter 2, chapter 3, chapter 4, and chapter 5, of the special laws of that year, all passed on the 8th day of March, A. D. 1861, and found on pages 213 and 238 of the special laws of that year inclusive?

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. These acts were certainly that discussion, and after these policies had been considered. That was all the legislation that year in reference to other roads.

Question. Was not the policy embodied in these different acts opposed by yourself and Mr. Shepard, and so far as you know by Mr. Chamberlain during that winter?

(Same objections.)

Answer. I opposed them, and voted against all these acts. Mr. Shepard opposed them for the same reasons which I did. I did not see Mr. Chamberlain until after the discussion.

341 Question. From the information which you obtained from Mr. Chamberlain when at Cleaveland and at any subsequent time during that session down to its close, did you understand him to be in favor or opposed to this disposition of the land-grants?

(Same objections.)

Answer. I understood him to favor the coupling the payment of the bonds with the disposition of the lands, and that was Shepard's position, but at the same time always anxious that such arrangements

should be made as would result in the building of the roads. When I did see him, he expressed himself a good deal disappointed with the legislation of that session.

Question. Did you not in good faith suppose you were reflecting Mr. Chamberlain's wishes in the course you pursued there in the legislature?

(Same objection.)

Answer. That was my purpose. I was very anxious to continue Mr. Chamberlain's connection with the railroads as the best means of getting the roads built and the bond question disposed of; hence I went to see him at Cleaveland to learn his purposes, &c., &c. The policy of coupling the payment of the bonds with the building of the roads was
342 the one I advocated, and Mr. Chamberlain was satisfied with it. There was a question between us as to the amount his bonds should be put in at, he rating them high, and I putting them much lower. I might possibly be mistaken about the question of the rating of the bonds arising at the conversation at Cleav'land. I don't think I can be mistaken about this plan being discussed at Cleav'land. I am not mistaken about the proposition that the building of the roads should be coupled with the payment of the bonds; that the lands and franchises should be regranted with the condition that the bonds should be returned and re-issued by the State as the roads were constructed. I know this was my plan, and understood Mr. Chamberlain as assenting to it. I do not know of his assenting to any other plan, except such as might be inferred from my testimony, that, as the matter had gone so far, he wanted the roads built.

Question. Do you recollect of the fact of Mr. Chamberlain's presenting a memorial or letter to the legislature, protesting against granting anew these franchises and lands unless coupled with some provision for the payment or settlement of his bonds?

(Same objection, and further, that the paper itself should be
343 produced, and further object to the witness stating the contents of the paper.)

Answer. I recollect that a paper signed by Mr. Chamberlain referring to the land-grant and bond question was introduced in the latter part of the session—that it was received with some derision. I don't even remember that it was read in the noise, and that it was very summarily disposed of, and that it was very short. What its contents were I am unable to remember. I am pretty certain that the fact was that they took no notice of it.

(Plaintiff's counsel here introduced in evidence the several chapters of the laws of 1861 referred to in the testimony of Mr. Banning, which are hereto annexed marked Exhibit .")

Redirect:

Question. Mr. Banning, you have stated in one of your interviews with Mr. Chamberlain, that there was a proposition to settle the State railroad bonds at a certain amount, or to that effect. At what amount were they to be settled at according to said proposition?

(Objected to by plaintiff's counsel as incompetent, immaterial, and irrelevant.)

Answer. My impression and recollection of that interview are, I went to Cleaveland to see Mr. Chamberlain in the hope of keeping
344 him connected with the building of the roads and to have his bonds settled. Now the plan in my mind and proposition that I wanted considered was, that these land-grants should be turned over to new companies, the old bonds surrendered and new bonds issued by the

State as the roads were constructed. The old bonds to be surrendered and be scaled or valued at a certain percentage, that percentage to be fixed or ascertained by a commission, and the constitution amended and a provision inserted for a tax to meet the interest. Mr. Chamberlain considered his bonds worth par, or to accept what he could prove they cost him. At this conversation or at some subsequent time, I do not remember distinctly, he was anxious to build a road giving us an eastern connection, making it as direct as possible, but did not want anything to do with the other lines of road. I talked with him about scaling the bonds, but don't know whether I stated to him the amount I thought they should be fixed at, although I had a sum fixed in my own mind. He always insisted that his bonds cost him par, and that they were worth par.

W. L. BANNING.

345 CLARK W. THOMPSON, a witness produced on the part of the defendants, being duly sworn, deposes and says:

I am president of the defendant The Southern Minnesota Railroad Company, and have been for several years; have been a director in that company ever since its organization under the act of March 4, 1864, and one of its active managers since about 1867, and all the time a stockholder. I held and controlled until about the 1st of December last about $2,250,000 out of the capital stock of $3,840,000, about.

Question. At the time of the organization of the company under the act of March 4, 1864, and during the building of the road by said company under said act, did you or the members of said company to your knowledge know or suppose that any lien or claim was asserted or made by the plaintiff or any other holder of Minnesota State railroad bonds upon the lands, franchises, or property granted or pledged to said company by said act?

(Objected to by plaintiff's counsel as immaterial, irrelevant, and incompetent, and not properly limited as to time.)

Answer. I did not, until about the time of the commencement of this suit, nor did any member of the company to my knowledge. Our
346 company has built one hundred and sixty-seven miles of road under that act. That was completed on the 1st day of January, 1871.

Question. Was this enterprize undertaken and carried through by you and your associates under the belief and faith that all that said act purported to grant or pledge to said company was to be received by the company free and clear of all liens and claims whatsoever, as purported by said act?

(Objected to same as last above.)

Answer. It was. There was no expectation that there would be any claims or conditions except such as were expressed in the acts under which we took the grants.

I am acquainted with the plaintiff, Selah Chamberlain; have been since 1858. I have seen him once or twice a year since, generally in the winter when he has been here, and occasionally in New York, and conversed with him about Minnesota railroad matters and Minnesota State railroad bonds, more or less. I was aware he held some of the Minnesota State railroad bonds. He knew, I believe, of my connection with the Southern Minnesota Railroad Company, and that said company was going on and building the road. I have had conversations with him about the payment of the Minnesota State railroad bonds.

347 Question. Did he ever state or inform you or claim that the bonds which he held were a lien upon the lands, franchises, or

property which your company had received from the State, or that said lands, franchises, or property were in any way liable or subject to the payment of the Minnesota State railroad bonds held by him or others until about the time of the announcement of this action?

(Objected to same as above.)

Answer. No, sir. I don't think Mr. Chamberlain and I ever had any conversation about this matter. He never made any such claim. I never knew that any such claim was made until about the time of the commencement of this suit.

My impression is that half or more of the lands described in Exhibit B to the complaint have been sold and disposed of by our company. As soon as the company got title from the State they commenced selling as fast as they could and have had them in market for sale and been selling as fast as they could ever since.

Question. How many miles of the road-bed constructed by the old company was used by the present company, of this road?

(Objected to as irrelevant and immaterial.)

348 Answer. Sixteen to seventeen miles. We used all the old graded road-bed except three or four miles. Considerable of the piling done by the old company had to be replaced and some of the bridges rebuilt, some in one and some in two years, by the new company. The average cost for constructing that road by the present company, including equipment, right of way, and all costs, is, as reported to the auditor of state, between $32,000 and $33,000 per mile. It also includes discounts on bonds.

Cross-examination:

At the time we took the lands and franchises under the act of 1864, I was aware that the State had loaned its credit to the road and that the old company had issued its bonds to the State to recover the payment of the loan. I was also aware that the Southern Minnesota Railroad Company was one of the land-grant companies which had participated in that loan of State credit. I was aware that the mortgage had been foreclosed and the lands and franchises bid in by the State; and that the State, at the time of the passage of the act of 1864, *the State* held these lands and franchises under that foreclosure. I understood that the State had issued of these State railroad bonds about $2,250,000

349 at that time. I was also aware that the State had made no provision for the payment of either the principal or interest of those State railroad bonds; was aware the interest had not been paid on them, and that Mr. Chamberlain held a considerable amount of those bonds issued to the Southern Minnesota Railroad Company. My associates named in the act of 1864 were all old residents of the State, except Thomas B. Stoddard, and he resided at La Crosse, directly across the Mississippi River, in Wisconsin. Mr. Sherwood, Miller, Cameron, Sprague, Holley, McRoberts, Walker, my associates, had all been members of the legislature of Minnesota. Meighen had been a member of the territorial legislature. I presume my associates had the same general knowledge of these which I did. It was a subject of public notoriety. Since 1864, from my connection with this railroad, and particularly since 1867, I have been acquainted with railroad and financial matters in Wall street in the city of New York.

Question. State whether among those railroad operators and financiers in Wall street, N. Y., who have been connected with Minnesota railroad enterprizes the history of the State railroad bonds, and

350 of the loan amendment and the proceedings under it, and the non-payment of the interest by the State have been generally known.

(Objected to by defendants' counsel as irrelevant, incompetent, and immaterial, and not proper cross-examination.)

Answer. The operators in railroads West, the men who bought and sold Minnesota bonds on speculation, did generally know, but those who bought small quantities of them did not generally know. I mean those who dealt in Minnesota securities or bonds in Wall street did generally know.

The company (So. Minn. R. R. Co.) have claimed the three or four miles of old road-bed which they did not use. They set up this claim last fall. The new company used all the bridges on the old grading with the exception of two. There were five old bridges in all. Mr. Chamberlain has never been present at any of the negotiations which resulted in the transfer of these lands franchises to our company. The conversations which I have had with Mr. Chamberlain in regard to railroad matters and State railroad bonds have been casual friendly conversations and not business conversations.

During the legislature in 1861, since the foreclosure of the
351 mortgages and the bidding in of the property by the State, I was a resident of the State. I was more or less posted as to the legislation from 1861 to 1864 inclusive in regard to this road.

CLARK W. THOMPSON.

EDMUND RICE, a witness produced by the defendants, being first duly sworn, deposes and says:

I have resided in St. Paul since July, 1849; have been connected with railroading in Minnesota since 1854 to 1872, in March; in railroads or projected railroads. I was president of the Minnesota and Pacific Railroad Company from May, 1857, to 31 December, 1871, one of these land-grant railroads. By virtue of the act of 10th of March, 1862, the company was authorized to be formed, to receive the grants and franchises which formerly belonged to the Minnesota and Pacific Railroad Company, and I became president of that company and continued to be such president until Dec. 31, 1871. I devoted my entire time to matters connected with these railroads. Our company contracted with parties to build the first ten miles between St. Paul and St. Anthony. I did officially on behalf of the company. Those parties were Winters, Harshman and Drake.

352 Question. State whether or not a portion of the compensation to be paid those parties for building said road from St. Paul to St. Anthony consisted of lands appropriated under the act of Congress of March 3, 1857.

(Objected to by plaintiff's counsel as irrelevant and incompetent.)

Answer. It did. I know Mr. Chamberlain, the plaintiff in this action; have known him since 1857. He has had a great deal to do with the building of railroads in Minnesota.

Question. State whether or not Mr. Chamberlain, the plaintiff, made any proposition to or had any negotiation with you as to the construction of the road from St. Paul to Anthony.

(Objected to as immaterial, incompetent, and irrelevant.)

Answer. He had some talk with me in regard to it, as president of the Minnesota & Pacific Railroad Company, prior to March 10, 1862. I think it was in July, 1861. The Minnesota and Pacific Company made a provisional contract with Winters, Harshman and Drake to build the ten miles from St. Paul to St. Anthony, on condition that the trustees of the 1st-mortgage bondholders should foreclose the mortgage, so
353 as to relieve the first ten miles from the lien of that mortgage and

enable the company to give Winters, Harshman and Drake the first lien upon the ten miles they should build. The trustees did foreclose, but one of them refused to deliver the deed; the foreclosure was made, but not perfected by the delivery of the deed. Winters, Harshman and Drake thereupon declined to go on under that contract. They had in the mean time purchased their iron and laid some ¾ or ½ mile of track, and had some more iron delivered here, with a couple of locomotives. I then had some communication with Mr. Shepard, Mr. Chamberlain's agent, on behalf of Mr. Chamberlain, which led to Mr. Chamberlain's coming here and talking with me about the building of the road himself, if he could purchase the materials of Winters, Harshman and Drake on or before the last day of December in that year, and it was verbally understood that he would do so in case he could purchase these materials. Both his object and mine was to avoid a forfeiture to the State under the act of 1861. I am not positive whether he was to assume the contract of Winters, Harshman and Drake or not. I am quite positive, however, that he was to assume it. I think he informed me he made the attempt to purchase the materials, but failed. I
354 was interested on behalf of the road to know what property our company was getting under the legislation of 1861, and was engaged in getting parties to build the road in some form on the faith of that property. I occasionally met Mr. Chamberlain after the last contract with Mess. Winters, Harshman, and Drake, and frequently talked of railroad matters. That was the subject which was uppermost in both his mind and mine in those days.

Question. State whether or not during these times you were aware that Mr. Chamberlain was the owner of Minnesota State railroad bonds issued to the Minnesota and *and* Pacific Railroad Co.

(Objected to as irrelevant and immaterial.)

Answer. I was.

Question. In any of these conversations upon railroad matters between you and Mr. Chamberlain, did he claim any lien upon or interest in any of the lands appropriated to the building of said land-grant railroads by virtue of being the owner of said Minnesota State railroad bonds?

(Same objection.)

Answer. I don't think he ever did.

Question. When did you first learn that he made any such claim?

(Same objection.)

355 Answer. I cannot state definitely; about a year or a year and a half ago. It is just possible that he might have stated he had been so advised. I have had many conversations within the last five years about the State providing for the payment of these bonds, and it is possible he may have stated in some of these that he had a lien upon the lands, but I do not remember distinctly any such conversation until within the last eighteen months or two years.

The St. Paul & Pacific Railroad was completed to St. Cloud in 1866, about seventy four miles; can't remember the year the St. Paul & Sioux City Railroad was completed to Mankato, but think it was in 1868.

Cross-examination:

In all the conversations between me and Winters, Harshman and Drake and me and Mr. Chamberlain in reference to building the first ten miles, it was a condition that a new foreclosure should be obtained, so as to remove the doubts as to the title under the foreclosure by the State. I mean it was to free the first ten miles of all incumbrances of every character and remove all clouds upon the title. One question was as to the State foreclosure.

356 There were other first-mortgage bonds of the company *other* than those given to secure the state for the loan of its credit, and my impression is that there were five of these outstanding; ($5,000) besides some which had been hypothecated before the execution of the supplemental trust-deed authorizing the governor to foreclose. The governor had proceeded to foreclose the mortgage under that supplemental trust-deed, and the rights acquired under that foreclosure had been released to the old company conditionally, by the act of 1861.

Before this conversation with Mr. Chamberlain the trustees had gone on under the original trust-deed and made a new foreclosure, and sold the property to John S. Watrous. His negotiations were with the expectation of procuring a deed from the trustees to Watrous, under this foreclosure, and from Watrous to the company.

I have been frequently a member of the State legislature since 1861 inclusive. I was in the legislature in the years 1864, '5, '7, 1872 & '3, and have been familiar with railroad legislation since 1860, except that I was out of the State during the session of 1870 & '71.

The topic of the disposition of the State-bond question and the building of the land-grant railroads was in nearly all the legislatures
357 down to the year 1862, and was the subject of frequent discussion in them all. I have some general recollection of the Chamberlain-Banning proposition of building the roads and retiring the old bonds and issuing new ones as fast as the railroads should be built. There have been a good many efforts to secure the payment of the bonds by the State, but I don't remember of their being coupled with the building of the roads since 1862. That proposition was agitated in the sessions of the legislature of 1861 and 1862, and prior to that, I think. The action of the legislature of 1862 was regarded as decisive —as settling the policy of the State adversely to the proposition of coupling the payment of the bonds with the building of the roads. This policy of coupling the payment of the bonds with the regranting of the lands and franchises by the State was understood to be the one which Mr. Chamberlain favored.

By reason of my connection with Minnesota railroad enterprises, has brought me in connection with railroad and financial circles in New York and also in Europe.

Question. State whether or no among those circles the history of the Minnesota State railroad bonds and the loan amendment, and
358 the proceedings under it, and State's neglect to pay the interest and to make provisions for its payment, was generally known or understood.

(Objected as incompetent, irrelevant, and immaterial, and not proper cross-examination.)

Answer. I think in most the circles it was, if not all of them. In nearly all those circles the amendment to the constitution and the amendment to that, and the legislation in respect to it, had to be critically examined.

Redirect examination:

These same circles, some of them, advanced moneys on the securities of our railroad companies. I refer particularly to the St. Paul & Pacific, and the first division of the St. Paul and Pacific, and generally to the other companies which succeeded the old land-grant companies.

One of the propositions referred to by me in my cross-examination of coupling the payment of the bonds with the building of the roads was, as near as I remember, to build a trunk line from La Crescent, by the way of Rochester and Faribault, to St. Paul and St. Anthony to Ano-

ka, and to retire the outstanding State railroad bonds at the rate,
359 I think, of $10,000 per mile upon the completion of sections of ten miles equipped, and to issue new bonds at the rate of $20,000 per mile. I think there were some other propositions of a similar character, but I don't remember the details of them. That was, I think, one of the Chamberlain propositions. In some of these propositions there was a proposition to scale the bonds on the basis of the cost of the grading of the roads, but I do not think Mr Chamberlain assented to this feature of scaling the bonds, but think he opposed it. I think the new bonds were to be an absolute bonus or gift.

EDMUND RICE.

JOHN L. MERRIAM, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

I have resided in St. Paul since the fall of 1860. I am vice-president of the St. Paul & Sioux City Railroad Company. Have been officially connected with that company since 1864. I was one of the original incorporators of that company, under the name of the Minnesota Valley Railroad Company. I went to Washington in the spring of 1864, in company with Mr. Horace Thompson, in connection with the busi-
360 ness of that company. No work had been done on the road by our company. Our company had not been organized. It was in the last of March, 1864. I think I met Mr. Chamberlain then in Washington; either there or in New York. I think it was in Washington. I had some conversation with him at that time relative to the legislation of that winter and relative to the building of the road. The conversation was principally between Mr. Thompson and Mr. Chamberlain. I was present. Mr. Chamberlain expressed himself as gratified at the legislation of the past session, and hoped we would organize a company and proceed to build the road. The matters were pretty fully talked over. I remember Mr. Thompson asked Mr. Chamberlain what he thought of it as a financial scheme. We were not much acquainted with building railroads. We went to Washington to get the grant extended. He thought well of it. He thought the land-grant a very valuable one, particularly if we got it extended. He said he hoped we would organize a company in Minnesota and go on and build the road. Mr. Thompson, I recollect,
asked him if he would join us in the enterprize. His reply was
361 that he would take it under consideration; that he had a good deal on his hands. I think he said he would give us all the aid he could.

(The foregoing conversation is subject to the same objection as that made to Mr. Horace Thompson's relation of the same conversation.)

I had known Mr. Chamberlain personally before and by reputation as a railroad man of experience.

Question. State whether or not these assurances of Mr. Chamberlain's referred to by you influenced you to proceed and enter upon the enterprize and prosecute the same.

(Objected to as incompetent.)

Answer. It did, sir, have some influence on me on going into the enterprize. I had confidence in his judgment as a railroad man. I knew nothing about railroads then.

Question. Did Mr. Chamberlain make any claim, by reason of his being the owner of Minnesota State railroad bonds or otherwise, to the lands, franchises, and property granted to your company by the legislation of 1864?

(Objected to as incompetent and immaterial.)

Answer. He did not.

Question. Had he made any such claim, would you have gone
362 on and prosecuted the enterprize?

(Same objection.)

Answer. I should not unless I had satisfied myself that the claim was illegal.

I first knew that Mr. Chamberlain made such claim in 1872. I had met Mr. Chamberlain since that conversation in Washington or New York two or three times a year, sometimes here and sometimes in New York, up to 1872. At these times I frequently had conversations with him more or less on railroad matters. Mr. Chamberlain knew that I was connected with this company.

Cross-examination:

I was not present at the legislature of 1864. This conversation with Mr. Chamberlain was after the act of 1864 had passed. One of our objects in visiting the East at that time was to secure capital to build the road and get eastern captialists enlisted in the enterprize; another, to secure an additional land-grant. I had no expectation of meeting Mr. Chamberlain when I left home. The meeting was entirely an accidental and casual one. I have resided in this city since 1860. I was not very
363 familiar with the State railroad legislation or the State railroad bond question at that time, in 1864. I knew that the State had loaned its credit to the old land-grant railroad companies, and that the companies had given a mortgage to the State to secure this loan; that there had been a default and foreclosure of these mortgages, and the lands and franchises and property of the companies bid in by the State. I knew the lands, property, and franchises transferred to our company by the State were obtained by the State under the foreclosure of the mortgage given by the Southern Minnesota Railroad Company to the State. I presume I knew that Mr. Chamberlain held a portion of the bonds issued by the State to the Southern Minnesota Railroad Company, and I knew that the interest on these bonds was unpaid. When I asked Mr. Chamberlain his opinion, it was as to whether it was a good enterprize financially, *as* not as to whether the title to the property was good. I don't think that question as to title was asked him. The aid which Mr. Chamberlain proffered us was to assist us with a good word in financial circles. I think, perhaps, we left Mr. Chamberlain with the
364 impression that he would join us. Among my associates Messrs. Cornell, Lincoln, Cutter, had been members of the legislature, and Judge Ames had been clerk of the senate, and Mr. Andrew G. Chatfield had been territorial judge.

JNO. L. MERRIAM.

Adjourned until June 14th, 1873.

JUNE 14, 1873.—Parties appeared by the solicitors.

A. JOHNSTON, being produced on the part of the defendants and duly sworn, deposes and says:

I live in St. Paul. I moved here first in 1863, and have been here since, except about two years when I was in Hastings. I am reporter for the St. Paul Pioneer; have been connected with paper almost all the time I have been in St. Paul. I know the plaintiff, Mr. Chamberlain; have known him by sight since 1857. I became somewhat familiar with the legislation of the year 1871 in my editorial capacity. I had no conversations with plaintiff before the passage of the act of that year rela-

tive to the submission of the bond question to the people. After that bill passed I had conversation with him relative to the bill. The
365 bill which I refer to was the one to submit the matter to the people at a special election. That was to be voted on in May; am not positive.

Question. State the purport of those conversations.

(Objected to as immaterial and irrelevant.)

Answer. I had very little conversation with Mr. Chamberlin, and that was entirely confined to bringing the matter before the people, the simple question of having tickets prepared for every county in the State. (Chapter 21 General Laws 1871, State of Minnesota, shown witness.) That is the act I refer to. (This law is offered in evidence, and is found on pages 52, 53, 54, and 55 of General Laws of 1871, being chapter 21, and was objected to by plaintiff's counsel as irrelevant and immaterial.)

Question. Were you employed by Mr. Chamberlain to make that distribution of tickets?

Answer. I was not employed by him personally to see that those tickets were distributed.

Question. By whom were you employed?

(Same objection.)

Answer. By George E. Skinner, of Faribault. I met Mr. Chamberlain after I had been around the State in that employment, and
366 while I was engaged in it. I met him in St. Paul. The conversation was on the same subject. I judged he was in favor of the distribution. He approved of my efforts in distributing the tickets. The tickets were both for and against the proposition. Some of those tickets were in blank. I was employed in favor of the proposition.

(Above testimony all taken subject to same objection.)

Question. State whether or not, in any conversation you have had with Mr. Chamberlain on railroad matters in Minnesota, and the legislation pertaining thereto, he has ever claimed that he had any interest in or lien upon any of the lands, franchises, or property granted to the railroad companies which succeeded the land-grant companies.

(Objected to same as last above.)

Answer. I never had any conversation with Mr. Chamberlain on the subject. I have stated that I have had conversations with him on railroad matters and the legislation pertaining thereto in this examination. It is a fact that I have had such conversations. In these conversations he never said he had any interest or lien on the lands, franchises,
367 or property granted to these companies succeeding the old land-grant companies.

Cross-examination:

In these various conversations the question of his having a lien on these lands never came up. We never discussed the question as to whether he did or did or did not have such lien. I was aware by general report that Mr. Chamberlain held some of these State railroad bonds.

ALEX. JOHNSTON.

H. H. SIBLEY, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

I have lived in Minnesota since 1834. I am a member of the St. Paul & Sioux City Railroad Company. I was a director in the original Minneapolis & Cedar Valley Railroad Company, which preceded the present St. Paul & Sioux City Railroad Company, and have been connected with this road since the commencement of operations on the road. I was not an original director, but have been ever since the company was put in

working order. I am acquainted with the plaintiff, Mr. Chamberlain; have known him since 1857 or 1858. I have always understood
368 that he was the owner and holder of Minnesota State railroad bonds. I have had conversations with him about railroad matters in Minnesota and the policy to be pursued in relation thereto. These conversations extend back to 1858, when I was governor of the State. I was the first governor of the State—elected in 1857, and took my seat in May, 1858, immediately after the admission of the State into the Union, and continued until 1st of January, 1860. My impression is that I had conversations with him after the failure and default of the old companies as to what should be done, but I cannot recall any particular conversation distinctly. I met Mr. Chamberlain here frequently after 1860; can't say whether every year or not. From 1864 up to the present time I have had frequent conversations with him on these subjects. I was a member of the legislature of Minnesota in 1871, from the county of Ramsey. I was chairman of the special railroad committee. That committee had in charge the provision to equitably settle the old State railroad bonds. The committee was appointed in reference to a resolution which I introduced concerning the liability of the State on these bonds. I had inter-
369 views and conversations with Mr. Chamberlain on that subject. (All conversations between witness and Mr. Chamberlain taken subject to same general objections of irrelevancy and incompetency.) The whole subject was elaborately discussed before the committee as to the best way for the State to extricate itself from its embarrassments. My recollection is that the draft of the bill which was passed subsequently was handed to me by Mr. Chamberlain. It was adopted, after warm discussions before the committee, as presented by Mr. Chamberlain, with some changes and modifications. Mr. Chamberlain presented *that* his views of the case, and was desirious that the legislature should take favorable action upon it. It was reported by the committee and passed the legislature with perhaps some amendments by both house and senate, but substantially as presented to the committee by Mr. Chamberlain. The act which I refer to is on pages 52, 53, 54, 55, of General Laws of 1871.

370 I adverted to the fact that I had heard rumors that the holders of these bonds claimed a lien on the lands granted to the companies who had built the roads in a speech I made in the house that session. I made a speech in the legislature on this subject, whether on the bill or resolution which I presented I cannot tell. I think I mentioned to Mr. Chamberlain this winter my surprize that the New York bondholders made any such claim.

Question. What did Mr. Chamberlain say, if anything, on that subject?

(Objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial, and on the further ground that all the rights of the defendants had attached at that time, and no action has since been on the faith of what he said.)

Answer. I understood Mr. Chamberlain to concur entirely with my expression of surprise, and, so far as I ever had any conversation, I never heard him express any other opinion than that the State was the party liable on the bonds.

(Plaintiff's counsel further object to the two first lines of last answer, because they give the witness' inferences from the conversation,
371 and not the conversation or the subject of it itself.)

I called that claim especially to Mr. Chamberlain's attention—the claim of the New York bondholders—not as an existing fact but as a

rumor. In that conversation Mr. Chamberlain did not claim or intimate that he had any lien or interest in those lands on account of his holding Minnesota State railroad bonds. I will say that in the speech I made I particularly denounced the idea of the bondholders making a claim of any such lien. Mr. Chamberlain, subsequently to the delivery of the speech, expressed himself very complimentarily on the speech, and did not dissent from it in any way. I mean the speech in general. I think I never heard of Mr. Chamberlain's making any such claim until his commencement of proceedings. Prior to 1871 I had general conversations with him about railroad matters, as railroad men having common interests. He knew I was interested in building the Minnesota Valley Railroad, and I knew he was interested in building the Minnesota Central Railroad. I had at one time about $30,000 of stock in our road, a little over.

371 Question. Would you have taken hold of the enterprize of building your railroad and invested your money therein had you known that any such claim as is set up in this action was made against the lands, franchises, and property granted to your company under the act of March 4, 1864?

(Objected to as incompetent.)

Answer. Emphatically, no.

Cross-examination:

I was governor of this State at the time of the passage of the loan amendment adopted April 15, 1858, and the legislation under it. I was not governor at the time the amendment really passed. I did not take my seat until May, 1858.

(Above testimony objected to as incompetent, not the best evidence, immaterial, and irrelevant.)

These State railroad bonds were issued under my administration to the amount of $2,275,000. I know bonds were issued to the Southern Minnesota Railroad Company to the amount of $10,000 per graded mile of road-bed, but the exact amount of bonds issued to that company I do not remember. I was aware of the fact that the Southern Minne-

373 sota Railroad Company executed and delivered to the State as security for these bonds the deed of trust and other papers required by the loan amendment. They were delivered to me as governor. I personally examined them, and I approved of them as being in accordance with the constitutional amendment. My recollection is that the grading done by that company was performed by Mr. Chamberlain. The bonds were issued to the company, and I was aware, but not officially, that some of those bonds were transferred to Mr. Chamberlain in payment of his labor. As governor of the State I visited financial circles in Wall street to assist in the negotiation of these State railroad bonds. I have remained a resident of the State since. I was governor and been connected more or less with these railroad enterprizes; and during all this time I have been conversant with the history of the legislation of the State in regard to their land-grant enterprizes, and am aware of the foreclosure of the mortgages by the State. They were initiated in my administration and consummated by my successor, Governor Ramsey. I was aware in 1864, at the time our company was organized, that the securities taken by the State for

374 the payment of this loan were foreclosed, and that under such foreclosure and forfeiture the State went into the possession of the land, franchises, and property of the old land-grant companies. I was aware that no interest was paid on those bonds since 1859, and that the State neglected to make any provision for its payment. I have an

indistinct remembrance that down to 1864, from time to time, petitions and memorials were presented to the legislature asking them to provide for the payment of the interest on these bonds. In 1864 it was a matter of public notoriety that the interest was not paid on these bonds, and that the State had provided no means for its payment, and I was aware of that fact.

(All preceding testimony of this witness was taken subject to the objection that it was incompetent, irrelevant, and immaterial, and not proper crossexamination.)

Question. Were you not aware of the fact that your company paid the State nothing for the grant of the lands and franchises included in the act of 1864?

(Objected to same as last.)

375 Answer. I am not aware that any specific sum was paid. but the company considered that the State turned over to them these lands, franchises, and property upon condition that they would build the road.

The speech which I have referred to was devoted principally to a review of the action taken in my administration in reference to those railroad bonds, and also generally to the policy to be pursued by the State in reference to them, giving, as I think, the true course to be pursued. That speech contained quotations from the executive record, tending to show that the State authorities up to the time those extracts were taken from had held and maintained that the State was exclusively liable for the payment of these bonds. The principal burden of that speech was that the State was primarily liable for the payment of these bonds, dollar for dollar, and to criticize severely the ida of repudiating their payment in any form. I referred to the rumor, which I considered authentic, of the claim of a lien by the New York bond-holders, which I denounced severely, but that was the principal burden of my speech.

The conversation with Mr. Chamberlain with reference to my speech was not merely a casual conversation complimentary of my speech,

376 for we were brought into very intimate relations in regard to these matters. I think, after the delivery of the speech, Mr. Chamberlain, who was in the lobby, took me by the hand and congratulated me. My recollection is, he said that that speech just met his views. The law of 1871, to which I have referred, was defeated at the polls.

Mr. Chamberlain told me that he had been some time holding these bonds, which he could not sell, and his object here was to arrive at some scheme by which he could get his pay. This bill was understood to be his proposition.

Examination, on behalf of Southern Minnesota Railroad Company, of same witness:

At the times these bonds were issued in 1858 there was a strong and active element in the State denouncing these bonds as illegally issued, and that they would ever oppose their payment. Whenever a proposition has been up for the payment of the bonds, a strong element has always appeared here to oppose their payment. When I went to New York in 1858 and 1859, to assist in the negotiation of these bonds, I failed.

Question. What was the principal cause of your failure?

(Objected to as immaterial.)

377 Ans. It was the opposition of certain citizens of the State and of certain leading newspapers to the bonds. But for such opposition I am confident I should have succeded in negotiating them, I think, at 90 cents on the dollar. After that the bonds never had any fixed

value; some were sold at 60 cents, and some as low as 20 cents; that was some time afterwards.

Question. Was Mr. Chamberlain at the time aware of your failure to negotiate the bonds in Wall street and of the principal cause of your failure?

(Objected to as immaterial.)

Answer. I have no doubt he was. I think he was aware of the opposition to the bonds here in the State from the outset.

Cross-examination:

That bond question passed by a very large majority. The vote was about 35,000 votes polled for it and from seven to eight thousand against it. The bonds were used during my administration for a considerable time as a basis for banking, subsequent to my negotiations in New York. They were received to a limited extent as a basis for banking at 90 cents on the dollar, upon affidavits duly made according to law. They were received by the State auditor.

Redirect:

378 My impressions are that some of those bonds which were used as a basis for banking were afterwards sold at auction upon the failure of the banks.

H. H. SIBLEY.

SELAH CHAMBERLAIN recalled, and further testified on behalf of the plaintiff:

I recollect the memorial very well, spoken of by Mr. Banning in his testimony as presented to the legislature of 1871, which he said was received with derision and contempt. The legislature did not accept it. They did not allow it to be entered on their journals. The cry among the members was, "Put it under the table." They stopped the clerk from reading it. I did not keep a copy of that memorial. I have never seen it since.

Question. What was its purport?

(Objected to as immaterial and incompetent.)

Answer. It was a memorial or petition asking the legislature to retain the franchises, lands, and graded road-beds of the Minnesota & Pacific and the Southern Minnesota Railroad Companies until provision
379 had been made for the payment of the State bonds issued on account of these roads. I believe that was the substance of it. I was absent during most of the session of 1861; got here the last part of the session. There was one scheme for the building of one line of road from La Crescent, via Rochester, Owatonna, Faribault, St. Paul, to Anoka, and as fast as ten miles of the road was constructed, one hundred thousand dollars of the old bonds should be given up to the State and the like amount of new bonds issued, provision being made for the payment of the interest of the new bonds, which I favored before the legislature of 1861 or 1862. That was the only proposition which I favored or had anything to do with. That proposition was finally defeated by what was regarded as a decisive vote in the legislature of 1862. It was also defeated in the legislature of 1861. After the defeat in 1862 of the only project which I was in favor of, I was not in the State during the session of the legislature up to the passage of the acts of March, 1864. I was not in the State when those acts were passed, and had no notice of their pending. I know Samuel B. Ruggles, one of the trustees of the defendant—a slight acquaintance. The last time I saw Mr. Ruggles
380 was when he visited this city several years ago. I was several

days in his company at that time, coming from La Crosse up; it was in low water, and we got on bars, and were finally landed below the city and had to walk up. We had a conversation in regard to railroad matters in the State, her bonds, &c. He talked upon the history of land-grant railroads very intelligently, and seemed to be well posted in regard to all of it. I gave him a history of my experiences of trying to get my pay on the State railroad bonds. In a general way the whole subject was talked over. I don't recollect that I had a talk with him about the loan amendment particularly.

Cross-examination:

Question. State the years you were in the State of Minnesota, commencing at 1866.

Answer. My belief is that I have been here in the State every year except one or two. I may have been every year. I could not say. I don't recollect the time of year I was here in 1860. The probability is I was here several times during that year. I should think I was. I was here in 1858 and 1859, several times each year. I was there engaged in the construction of the Minnesota and Pacific, and what was then
381 known as the Southern Minnesota Railroads, in 1858 and 1859. After that I had very little business here until the middle of the year 1863; after that, then I became engaged in the construction of the Minnesota Central Railroad. The interest I had in the Minnesota State railroad bonds brought me during the sessions of several legislatures; in 1867, particularly, I made an effort *particularly* to get legislation to pay them. I was here a few weeks only in 1870 at the session, and I was here in 1871 when this last act was passed—the compromise act—tending the sessions. I was here a short time in 1860 and 1861 during the session of the legislature. I was not here during the sessions of the legislature in the years 1862, '3, '4. Can't state the year I was here with Mr. Ruggles. It was 1864, '5, or '6. It might have been as late as 1867, but I think not. I don't know the object of his visit. He was he' some time. We were at the hotel together. I had met him before in Milwaukee and New York, but my acquaintance with him was very slight. At the time I saw him I think he told me he was trustee of the Southern Minnesota Railroad bonds.

Question. In the interview you had with Mr. Ruggles in Min-
382 nesota, referred to by you, did you make any claim of having a lien upon the lands, property, and franchises, which had been transferred to that company under the act of March 4, 1864?

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. I did not.

S. CHAMBERLAIN.

Plaintiff's counsel here offer in evidence, from the special laws of 1862, chapters 17, 18, 19, 20, also chapters 1, 2, 3, special laws of 1863.

(Objected to as incompetent, irrelevant, and immaterial.)

And here the testimony was closed.

D ICT OF MINNESOTA, *ss:*

I, H. E. Mann, examiner in chancery of said court, do hereby certify and return to the hon. the judges of said court that each of said witnesses were by me first duly sworn in said cause, and his testimony
383 reduced to writing by me in the presence of the solicitors of the parties, and carefully read by each witness in such presence, and by each witness subscribed in attestation and approval thereof; that the reading of the testimony of each witness to such witness was waived

by the solicitors of the parties; that the foregoing is a true and correct narrative of the proceedings before me, and the exhibits hereto attached are the exhibits referred to in such depositions.

All of which is respectfully submitted.

H. E. MANN, *Examiner.*

384 EXHIBIT A.—H. E. M., *Examiner.*

UNITED STATES OF AMERICA,
State of Minnesota:

1,000] Seven per cent. Minnesota State. [1,000

No. 447.] Seven per cent railroad bond. [No. 447.

The State of Minnesota acknowledges to owe, and promises to pay to the order of the Southern Minnesota Railroad Company, at the Metropolitan Bank, in the city of New York, or at such other place in said city as may be hereafter designated by law, the sum of one thousand dollars, on the first day of December, A. D. one thousand eight hundred and eighty-three, with interest at the rate of seven per centum per annum, to be paid semi-annually at the place or places aforesaid, on the first day of June and December of each year, on the presentation and surrender of the proper coupon hereto attached.

This bond is issued under authority of an amendment to the constitution of the State of Minnesota, adopted by the people on the 15th day of April, 1858, and proclaimed by the governor of the State on the 5th day of May, 1858.

Witness the great seal of the State of Minnesota, and the signatures of the governor and treasurer of said State, at St. Paul, Minnesota, this first day of December, A. D. 1858, and of the State the first.

[SEAL.] HENRY H. SIBLEY, *Governor.*
GEO. W. ARMSTRONG, *Treasurer.*

385 Pay the above bond and all accruing interest as maturing unto bearer.

The Southern Minnesota Railroad Company hereby waives the presentment, demand, and notice of this bond and the interest-coupons thereto attached.

DANIEL WELLS, JR.,
Prest. of the Southern Minnesota R. R. Co.

To which bond were attached forty-eight interest-coupons, of which the following are copies:

STATE OF MINNESOTA.

35.] *Coupon No.* 50. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1883, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] [*Coupon No.* 49.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1883,

at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

386 STATE OF MINNESOTA.

35.] *Coupon No.* 48. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1882, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 47. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1882, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 46. [35

Will pay to bearer thirty-five dollars, on the 1st. day of Dec., 1881, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

387 STATE OF MINNESOTA.

35.] *Coupon No.* 45. [35.

Will pay to bearer thirty-five dollars, on the first day of June, 1881, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 44. [35.

Will pay to bearer thirty-five dollars, on the first day of Dec., 1880, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 43. [35.

Will pay to bearer thirty-five dollars, on the 1st d ay of June, 1880, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 42. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec.,
388 1879, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 41. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1879, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 40. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1878, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 39. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1878, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

389 STATE OF MINNESOTA.

35.] *Coupon No.* 38. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1877, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 37. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1877, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 36. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1876, at the Metropolitan Bank, in N. York City, being 6 mos.' int on No. 447.

GEO. ARMSTRONG, *Treas'r.*

390 STATE OF MINNESOTA.

35.] *Coupon No.* 35. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1876, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 34. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1875, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 33. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1875, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

391 STATE OF MINNESOTA.

35.] *Coupon No.* 32. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1874, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 31. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1874, at the Metropolitan Bank, in N. Y. City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 30. [35.

Will pay to bearer thirty-five dollars, on the 1st day of December,

1873, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

392 STATE OF MINNESOTA.

35.] *Coupon No. 29.* [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1873, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No. 28.* [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1872, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No. 27.* [35.

Will pay to bearer thirty-five dollars, on the 1st day June, 1872, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 448.

GEO. ARMSTRONG, *Treas'r.*

393 STATE OF MINNESOTA.

35.] *Coupon No. 26.* [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1871, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No. 25.* [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1871, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1870, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

394 STATE OF MINNESOTA.

35.] *Coupon No.* 23. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1870, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 22. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1869, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 21. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1869, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

395 STATE OF MINNESOTA.

35.] *Coupon No.* 20. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1868, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 19. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1868, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 18. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1867, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

396 STATE OF MINNESOTA.

35.] *Coupon No.* 17. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1867, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 16. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1866, at the Metropolitan Bank, in N. Y. City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 15. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1866, at the Metropolitan Bank, in N. Y. City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

397 STATE OF MINNESOTA.

35.] *Coupon No.* 14. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1865, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 13. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1865, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 12. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1864, at the Metropolitan Bank, in N. York City, being 6 mos.' int on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

398 STATE OF MINNESOTA.

35.] *Coupon No.* 11. [35.

Will pay to bearer thirty-five dollars, on the 1st day of June, 1864, at

the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 10. [35.

Will pay to bearer thirty-five dollars, on the 1st day of Dec., 1863, at the Metropolitan Bank, in N. York City, being 6 mos.' int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 9. [35.

Will pay to bearer thirty-five dollars on the 1st day of June, 1863, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

399 STATE OF MINNESOTA.

35.] *Coupon No.* 8. [35.

Will pay to bearer thirty-five dollars on the 1st day of Dec., 1862, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 7. [35.

Will pay to bearer thirty-five dollars on the 1st day of June, 1862, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 6. [35.

Will pay to bearer thirty-five dollars on the 1st day of Dec., 1861, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

400 STATE OF MINNESOTA.

35.] *Coupon No.* 5. [35.

Will pay to bearer thirty-five dollars on the 1st day of June, 1861, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG, *Treas'r.*

STATE OF MINNESOTA.

35.] *Coupon No.* 4. [35.

Will pay to bearer thirty-five dollars on the 1st day of Dec. 1860, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG.

STATE OF MINNESOTA.

35.] *Coupon No.* 3. [35.

Will pay to bearer thirty-five dollars on the 1st day of June, 1860, at the Metropolitan Bank in N. York City, being 6 mos. int. on bond No. 447.

GEO. ARMSTRONG.

401 EXHIBIT B.—H. E. MANN, *Examiner.*

United States circuit court, district of Minnesota.

Agreed statement of facts.

SELAH CHAMBERLAIN.
vs.
THE ST. PAUL & SIOUX CITY RAILROAD COMPANY, Southern Minnesota Railroad Company, Samuel B. Ruggles, Albon P. Man, Charles Scheffer, William R. Marshall, Thomas A. Scott, Hiram D. Hall, George I. Seney, and John A. Stewart.

It is hereby stipulated and agreed by and between the parties to this action that the following shall be taken as proved and deemed in evidence in this action, subject to any objections to relevancy and materiality which might have been taken to such testimony had the same been regularly taken before an examiner, and that the cause may be heard upon the pleadings and such other testimony, if any, as either of said parties may desire to introduce and shall cause to be taken before an examiner or commissioner at any time before the

402 First. That on the 3d day of March, 1857, the Congress of the United States passed an act, approved on that day, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," which act is found in and published in the Statutes at Large of the 3d session of the 34th Congress, 1856-'7, pp. 195, 196, 197, to which reference is made, and which may be used and read on the hearing.

Second. That on the 22d day of of the same year, 1857, the legislature of the Territory of Minnesota, convened in extra session, passed an act, approved on that day, entitled "An act to execute the trust created by an act of Congress entitled 'An act making *making* a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public

lands in alternate sections to the State of Alabama to aid in the
403 construction of a certain railroad in said State,'" among other things relating to the Root River Valley and Southern Minnesota Railroad Company, (a corporation duly incorporated by the legislature of said Territory by an act entitled "A bill for an act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2nd, 1855, which act is published in session laws of the Territory of Minnesota for 1855, p. 73,) which act of said territorial legislature is published in the session laws, ex. session 1857, pp. 18, &c.

Third. That thereafterwards, and on the 23d day of May, A. D. 1857, the legislature of said Territory passed an act, approved on that day, purporting to change the name of said corporation, and providing that its corporate name should hereafter be the Southern Minnesota Railroad Company, which act is published page 253, session laws, extra session, 1857.

Fourth. That the lines of roads mentioned in said act of Congress, and which said company was by said territorial act authorized to con-
struct, were definitely surveyed, located, and marked and staked
404 out upon the ground, to the extent of the grading hereinafter mentioned, in July, 1857, and the survey filed in the General Land-Office, at Washington, D. C.

Fifth. That on the 12th day of August, 1858, the legislature of said State passed an act, approved on that day, entitled "An act concerning land-grant railroads," and published in the general laws of the State of Minnesota of 1858, pages 178, 179, 180, 181.

Sixth. That thereafterwards, and prior to the issue of any State bonds hereinafter referred to, the said original Southern Minnesota Railroad Company duly executed an instrument pledging the net profits of its said roads for the payment of the interest of the State bonds so to be issued aforesaid, and delivered the same to the governor of said State, and did, to wit, on the 15th day of October, 1858, execute and deliver to the said governor an instrument, a correct copy of which instrument is set out in the complaint, which instrument was thereupon deposited and filed in the office of the secretary of state of said State, and has ever since remained on file in said office.

405 Seventh. That further, said corporation, under date of the first day of October, A. D. 1858, but which instrument was acknowledged on the 16th day of May, 1859, executed its trust-deed to Benjamin Pringle, of Batavia, in the State of New York, and Andrew G. Chatfield, of Belle Plaine, in the State of Minnesota, to secure the payment of its first-mortgage bonds and the interest thereon as therein provided. That said trust-deed was deposited upon its execution and delivery as aforesaid and filed in the office of the secretary of state of the State of Minnesota, and has ever since remained so deposited and on file. That a copy of said trust-deed is published in Edgerton's Railroad Laws, page 419.

Eighth. That thereupon the said original Southern Minnesota Railroad Company entered upon the construction of its said railroads, and contracted with and employed the plaintiff to grade and prepare the road-beds of the said roads for the superstructure, and that the plaintiff thereupon proceeded to grade and prepare said road-beds, and graded, ready for the superstructure, commencing at Mendota and running
westward, about 37½ miles of the road from St. Paul and St. An-
406 thony, via Minneapolis, to a convenient point of junction west of the Mississippi River to the southern boundary of the said Territory, in the direction of the mouth of the Big Sioux River, and about

twenty miles of the railroad from La Crescent, via Target Lake, up the valley of the Root River to a point of junction east of range No. seventeen with the road from Winona, via St. Peters, to *to* a point on the Big Sioux River south of the 45th parallel of north latitude.

Ninth. That as often as any ten miles of either of said roads were constructed and completed ready for placing the superstructure thereon, having produced to the governor the proper evidence thereof, and transferred to the treasurer of said State an amount of its first-mortgage bonds secured by said mortgage and trust-deed corresponding to the State bonds issued to it, the governor caused to be issued to said company the bonds of said State to the amount of one hundred thousand dollars for every ten miles so graded, and all of which were issued to said company during the years 1858 and 1859, which bonds, except
407 the dates and numbers, were in the following form:

"Seven per cent.

"UNITED STATES OF AMERICA,
"*State of Minnesota:*

"1,000.] Seven per cent. [1,000.

"No. .] *Minnesota State railroad bond.* [No. .

"The State of Minnesota acknowledges to owe and promises to pay to the order of the Southern Minnesota Railroad Company, at the Metropolitan Bank, in the city of New York, or at such other place in said city as may be hereinafter designated, the sum of one thousand dollars on the first day of December, A. D. one thousand eight hundred and eighty-three, with interest at the rate of seven per cent. per annum, to be paid semi-annually, at the place or places aforesaid, on the first days of June and December, upon the presentation and surrender of the proper interest-coupons her'to attached. This bond is issued under authority of an amendment to the constitution of the State of Minnesota adopted by the people on the 15th day of April, 1858, and proclaimed by the governor of the State on the 15th day of May, 1858.
408 "Witness the great seal of the State of Minnesota and the signature of the treasurer of said State, at St. Paul, Minnesota, this day of , 18 , and of the State the .

(Signed) [L. S.] "HENRY H. SIBLEY,
"*Governor.*

"Countersigned and registered.

"GEORGE W. ARMSTRONG,
"*Treasurer.*"

To each of which were attached the proper coupons, referred to in said bonds, representing the semi-annual installments of interest and payable as in said bonds set forth. That each of said bonds so issued and delivered by the governor of said State to said company thereafter had placed upon it the following endorsement or writing, appended to the bottom thereof:

"Pay the above bond and all accruing interest as maturing unto bearer. The Southern Minnesota Railroad Company hereby waives the presentment, demand, and notice of this bond and the interest-coupons thereto attached.

(Signed) "DANIEL WELLS, JR.,
"*Pres. of the Southern Minnesota Railroad Company.*"

That at the several times of the endorsement and delivery of said bonds of said company Daniel Wells, jr., was its president, and described himself as such when he signed said instruments or writing appended to said bonds. That said company secured of the governor of said State bonds as aforesaid, in the aggregate about five hundred and seventy-five bonds of one thousand dollars each, and deposited with the treasurer of said State an equal amount of its first-mortgage bonds, secured by said mortgage and trust-deed, as security for the payment by it of the interest and principal of said State bonds.

That of all the State bonds so issued to the said original Southern Minnesota Railroad Company by the said governor a considerable number thereof, of the denomination of one thousand dollars each, were delivered by the president of said original Southern Minnesota Railroad Company to the plaintiff in payment for said grading.

That the plaintiff is still the holder of a large amount of said State-bonds. That no part of the principal has been paid, and no part of the interest or interest-coupons after the first day of December, 1859, has been paid.

Tenth. That after grading about fifty-seven and one-half miles of the said roads, the said original Southern Minnesota Railroad Company, to wit, some time in the year 1860, made default in the payment of the interest on said State bonds so issued to it as aforesaid, and in the payment of the interest on its first-mortgage bonds delivered to the treasurer of State and held by him as security for the payment of said State bonds, and abandoned work on its said roads and became insolvent, and no work was afterwards done on said road by said company, nor any further steps taken in discharge of its corporate obligations, and no more State bonds issued to it.

That said original Southern Minnesota Railroad Company never completed any part of said road, and did no more than the grading hereinbefore mentioned.

Eleventh. That the said original Southern Minnesota Railroad Company, having made default in the payment of the interest coupons maturing upon said State bonds issued to it as aforesaid on the first day of June, 1860, and also in the payment of the interest maturing upon its own bonds secured by said mortgage and trust-deed, and the governor having, in writing, requested a foreclosure of said mortgage by the trustees therein named, *by the trustees therein named*, and said trustees having refused and neglected to proceed to the foreclosure of said mortgage or trust-deed, and the legislature having authorized him, said governor, to foreclose and purchase at the foreclosure sale the lands, property, and franchises of said company conveyed in trust as aforesaid by said mortgage by an act of the legislature of said State of Minnesota entitled "An act in addition to an act entitled 'An act concerning land-grant railroads,' passed August twenty-fifth, eighteen hundred and fifty-eight," passed March 6, 1860, published in the session-laws of 1860, p. 269, the said governor did, on the 16th day of October, 1860, duly cause said trust-deed to be foreclosed in conformity with the provisions of said trust-deed and of the amendment of the constitution and the statutes in that case made and provided, and hereinafter referred to, and all lands, property, rights, and franchises described in said trust-deed to be exposed for sale, at public auction, after due notice by advertisement, pursuant to the provisions of said trust-deed, and, there being no other bidder, caused the same to be bid in and purchased for and in the name of the State, and did, pursuant to said trust-deed and statutes, cause the necesary conveyances of said property, lands, and

franchises to be executed and delivered and deposited and filed in the office of secretary of state, where the same, with the evidence of said foreclosure-proceedings, have ever since remained deposited and on file.

Twelfth. That the State of Minnesota has never paid any part, either principal or interest, of said State bonds. That from the date of said purchase in October, 1860, until the fourth of March, 1864, the State of Minnesota so held all the lands, property, and franchises acquired by her under said foreclosure sale.

Thirteenth. That prior to said foreclosure sale, and on the 23d day of May, 1860, the lands described in the schedule annexed to the complaint were certified to the State of Minnesota by the Commissioner of the General Land-Office.

413 Fourteenth. That the lands described in Schedule B annexed to the complaint comprise and embrace all the lands found to be applicable to that line of road, when definitely located, from La Crescent, via Target Lake, up the valley of Root River to a point of junction west of range seventeen with a railroad, via St. Peters, to a point on the Big Sioux River south of the 45th parallel of north latitude.

Fifteenth. That on the 4th of March, 1864, the State of Minnesota being still the owner and holder of the property and rights acquired under said foreclosure sale or any other source, and a considerable number of the State bonds aforesaid being still held by plaintiff and wholly unpaid, except as aforesaid, the legislature of said State passed the act referred to in the complaint, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," under which the defendant The Southern Minnesota Railroad Company and The Minnesota Valley Railroad Company were organized and have been acting; that

414 said act is published in the special session laws of 1864, p. 1.

Sixteenth. That the name of the Minnesota Valley Railroad Company was by an act approved March 1st, 1870, changed to the St. Paul and Sioux City Railroad Company, one of the defendants in this action, which act is published in special session laws of 1870, on page 354.

Seventeenth. That on the 9th day of October, A. D. 1865, the Minnesota Valley Railroad Company having completed ten miles of its road, pursuant to the provisions of said contract or act of 1864, thereupon received a deed from the governor, by virtue of the authority vested in him by said act, of the lands set forth in Schedule A attached to the complaint, a copy of which deed is hereto attached and marked "Exhibit C," and made a part of this case.

Eighteenth. That the defendant The Southern Minnesota Railroad Company having completed ten miles of its road from La Crescent up the valley of the Root River, pursuant to the provisions of said act of 1864, the governor of said State did thereupon, and pursuant to

415 said act, by deeds dated January 6, 1866, December 5, 1866, and April 16, 1867, convey to the defendant The Southern Minnesota Railroad Company, *in* lands described in said deeds, and which are the same lands described in Schedule B attached to the complaint, copies of which deeds are hereto attached, marked "Exhibits D, E, and F."

Nineteenth. That said acts of loaning the State credit and the said State bonds to said company, and of their transfer to third parties, and the attempt and failure of said companies to build their roads, and the foreclosure of their trust-deeds, and the neglect and refusal of the State to pay the State railroad bonds, were at the date of the act of

1864 and the execution of the deeds to said companies, and down to the present time, matters of public notoriety in the State of Minnesota.

Twentieth. That of the parties to whom said grant of 1864 were made, the corporators of the Southern Minnesota Railroad Company, C. D. Sherwood had been a member of the house of representa-
415 tives of said State, the speaker of said house, and lieutenant-governor; Luke Miller, Daniel Cameron, B. D. Sprague, H. W. Holley, and Thomas McRoberts had been members of the legislature of said State in which said matters connected with said outstanding State bonds and the securities held by the State had been repeatedly discussed; four of them, namely, Miller, Sprague, Holley, and McRoberts, were members of the legislature of 1860, which authorized the foreclosure, and voted for the act of March 6, 1860, authorizing such foreclosure, and were familiar with the entire history of said loan.

Twenty-first. That the persons to whom were granted the lands and franchises which the Minnesota Valley Railroad Company received, the corporators in that company, all were residents and old citizens of the State, and were so at the adoption of the loan amendment and of the foreclosure, and during the entire period from the adoption of said amendment to the act of 1864, and the deeds executed pursuant to its provisions by the governor, and were familiar with the whole history
417 of said proceedings; that of the other defendants, Charles Scheffer was treasurer of State from 1860, when said act authorizing such foreclosure took place, during the entire period until 1867, and as such had the official custody of said records given to the State by said company; was present at the foreclosure and purchase by the governor, and familiarly acquainted with the entire history of said proceeding; that the defendant William R. Marshall is *in* an old resident of the State, its governor from January, 1866, to January 1870; was a resident at the time of the loan amendment, and ever since that time has resided in St. Paul; that he was a trustee of the bondholders of one of the other companies, not defendant in this action, securing State aid under said loan amendment, and, as such, at the request of the governor, caused the mortgage of said other company to be foreclosed, and was familiar and conversant with the entire history of said loan, the issue of said bonds; that they had never been paid, and are outstanding in the hands of third parties, and that the State had foreclosed and bid in the lands and franchises of said companies
418 for default in payment of said State bonds.

Twenty-second. That the several trust-deeds and mortgages alleged in the several answers to have been given to secure issues of preferred stock, land-certificates, and bonds were given at the dates and for the amounts stated in the answers, respectively, and that said bonds and stock and land-certificates are now outstanding to the extent stated in said answers; that the said bonds, preferred stock, and land-certificates mentioned in said answers were by said several companies sold to and are now held by persons who purchased the same for full value, and without notice other than the law would imply from the existence of the laws, records, conveyances, proceedings, proved or admitted, in the suit of any claim on the part of the plaintiff to any part of the property described in said mortgages, and that each of said companies, defendants, expended the moneys realized by it by the sale of said bonds, preferred stock, and land-certificates in constructing and equipping its road; that each of said companies, defendants, has sold and conveyed
419 in good faith, to parties who purchased in good faith and for full

value, a large portion of the lands conveyed to it by the governor of said State aforesaid.

That in the construction and equipment of its said road said companies expended, the Southern Minnesota Railroad Company five millions of dollars, and the St. Paul and Sioux City Railroad Company three millions dollars; that the former company has constructed and equipped one hundred and eighty-seven miles of its road, and the latter company one hundred and seventy miles of its road; that no title, right, or license which the old company received, if any, in regard to right of way enured in fact to the benefit of the defendant companies, or either of them, nor did said latter companies, or either of them, have any knowledge or notice that said old company had obtained any such right, title, or license; that each of the present companies, defendants, bought and paid for the right of way from the individual land-owners, over and upon which the grading by the plaintiff was done, so far as they used the same.

420 That by reason of pre-emption settlements and cultivation there was at the time said routes were definitely located so large a deficiency of lands on the first twenty miles of each of said roads that it required all the alternate sections designated by odd numbers within both the six and fifteen mile limits to furnish the complement of lands accruing to the State under said act of Congress; and the same were all subsequently certified to the State and embraced in the schedules annexed to the bill.

That by an act approved March 10th, 1862, the legislature of said State transferred the franchises and property of the Minneapolis and Cedar Valley Railroad Company, another of the land-grant roads holding lands under said act of Congress and which had received State aid and bonds under said amendment and had defaulted and its mortgage given under said amendment had been foreclosed and its property and franchises bid in by the State, to certain corporators therein named, who, on December 23, 1862, organized and accepted said grants; which act is published on page 226 special laws 1862, and may be used and referred to on the hearing.

421 That another act was passed by said legislature, on March 6, 1863, modifying said grants, which said corporation (organized under the act of 1862) did, on the 27th May, 1863, refuse to accept; that at a meeting held at St. Paul, May 27, 1863, said corporation entered into an arrangement to secure the building of said road with certain parties, of whom plaintiff was one, by which said parties were required to make a deposit to secure the building of said road; and to enable them to do so, certain of the said corporators then and there resigned, and said parties undertaking to build said road were elected in their place, and said corporators proceeded to open subscriptions to stock to the amount of $1,500,000, all of which was taken, the plaintiff taking of said stock $100,000, and was elected president; and thereupon and prior to the act of 1864, set out in the complaint, had built and completed about fifteen miles of said road, and continued to build said road after defendants commenced work under the act of 1864, and finished and completed the same, and under the act of 1862, and in accordance with its provisions, and secured all the benefits pro-

422 vided for in and by said act.

That the State of Minnesota has never made any provision for the payment of principal or interest of said State railroad bonds.

J. M. GILMAN,
Solicitor of Southern Minnesota R. R. Co.
GILFILLAN & WILLIAMS,
Solrs. for Defts. Ruggles, Man, Marshall, Scheffer, Scott, & Hall.
H. J. HOWE,
Solr. for Defts. Ruggles & Man.
E. C. PALMER,
Solr. for Defts. Ruggles, Man, Marshall, Scheffer, Scott, & Hall, and the St. Paul and Sioux City Railroad Company.
F. R. E. CORNELL,
GORDON E. COLE,
Solrs., & of Counsel for Plff.

423 EXHIBIT C.—H. E. MANN, *Examiner.*

This indenture, made this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-five, between the State of Minnesota, party of the first part, and the Minnesota Valley Railroad Company, a body corporate created and organized by and under the laws of the State of Minnesota, party of the second part, witnesseth:

Whereas by an act of Congress of the United States of America approved on the third day of March, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads therein, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," there was granted by the United States of America to the Territory of Minnesota for the purpose of aiding in the construction of certain railroads therein named, among others, from Saint Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi to the southern boundary of the Territory in the direction of the mouth of the Big Sioux River,

424 every alternate section of land designated by odd numbers for six sections in width on each side of said roads and branches: But in case it should appear that the United States should have, when the line or route of said roads should be definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval by the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as should be equal to such lands as the United States had sold or otherwise appropriated, or to which the rights of pre-emption had attached as aforesaid, which lands thus selected in lieu of those sold, and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, should be held by the Territory or future State of Minnesota for the use and purpose aforesaid;

425 And whereas it was further in and by said act provided that the said lands thereby granted to the said Territory or future State of Minnesota should be subject to the future disposal of the legislature thereof, for the purposes therein expressed, and no other, and that the lands thereby granted to said Territory or future State should be

disposed of by said Territory or future State only in the manner following, that is to say:

That a quantity of land not exceeding one hundred and twenty sections, included within a continuous length of twenty miles of said roads and branches, might be sold, and when the governor of said Territory or future State shall certify to the Secretary of the Interior that any continuous twenty miles of said roads and branches is completed, then another quantity of land thereby granted, not to exceed one hundred and twenty sections for each of said roads or branches having twenty continuous miles completed, as aforesaid, and included within a continuous length of twenty miles of each of said roads or branches, might be sold, and so from time to time until said roads and branches are completed;

And whereas the legislative assembly of the late Territory of
426 Minnesota, by an act approved on the twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act to execute the trust created by an act of Congress making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," and granting lands to certain railroad companies therein named, did authorize and empower the Root River Valley and Southern Minnesota Railroad Company, a then existing corporate body, to survey, locate, and construct, complete, and perpetually to have, use, maintain, and operate, a railroad from St. Paul and St. Anthony, via Minneapolis, to a point of junction at Shakopee City, in the county of Scott, and thence, via Belle Plaine, Clarksville, Le Sueur, Traverse de' Sioux, St. Peter, Kasota, Mankato, and South Bend, the southern boundary of the Territory of Minnesota, in the direction of the mouth of the Big Sioux River, and did by the said last-named act of the legislature of
427 said Territory provide that all lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of the aforesaid act of Congress approved March 3d, 1857, applicable to the said last-named roads or lines, are hereby disposed of and confirmed to and upon the said Root River Valley and Southern Minnesota Railroad Company;

And whereas by a deed of trust executed by the Southern Minnesota Railroad Company on the first day of October, 1858, to Benjamin Pringle, of Batavia, New York, and Andrew G. Chatfield, of Belle Plaine, State of Minnesota, trustees, to which reference is made for further description, the said Southern Minnesota Railroad Company conveyed to said trustees all their right, title, and interest in said railroad and lands hereinbefore mentioned, in trust for the payment of the first-mortgage bonds issued by said company;

And whereas the State of Minnesota, pursuant to the provisions of the constitution of said State, became the owner and possessor of six hundred of the first-mortgage bonds of said company, of denominations of one thousand dollars each; and whereas said company made
428 default in the payment of the interest due upon said bonds, and the said trust-deed was fully foreclosed, and the lands, road, and franchises therein conveyed sold, pursuant to a power of sale contained in said deed, and all right, title, and interest of said company therein bid off and purchased by the governor of said State of Minnesota, for and in the name of said State, pursuant to law;

And whereas by the provisions of chapter two of the act of the legisla-

ture of the State of Minnesota entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts therein in relation thereto," approved March 4, 1864, it was provided "that all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company hereinbefore done or suffered by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and on behalf of the State, or by reason of a sale of the same, or any part thereof, by the governor
429 of the State of Minnesota and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, pertaining to the line of road from Saint Paul and from Saint Anthony via Minneapolis to a point of junction at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Sueur, Traverse de' Sioux, Saint Peter, Kasota, Mankato, and South Bend to the southern boundary of the Territory, in the direction of the Big Sioux River, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress approved March 3, 1857, pertaining to said line of road, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," are hereby granted, vested in, transferred, as follows, to wit, all the rights, immunities, benefits, privileges, franchises, lands, interests, and property aforesaid appertaining, relating, or
430 applicable to that portion of said road last aforesaid, to Horace Thompson, D. W. Ingersoll, S. W. Farnham, Andrew G. Chutfield, Isaac Lincoln, F. A. Denabower, John J. Porter, P. Berkey, H. C. Smith, John L. Merriam, F. R. C. Cornell, E. W. Cutter, Eli B. Ames, J. S. Letford, William Huey, B. R. Laird, and Isaac Marks, their associates and successors, free and clear of all claims and liens thereon and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act, which said persons, their associates and successors, shall be known by the name of the Minnesota Valley Railroad Company, and by that name may sue and be sued and have and exercise all the powers, rights, and privileges appertaining to that portion of the road last hereinbefore designated which heretofore pertained to the said Southern Minnesota Railroad Company;

And whereas it was further provided in said last-named act that the Minnesota Valley Railroad Company should not fully acquire the
431 property, rights, privileges, and franchises until said company should fully complete and put in running order ten miles of said railroad, and upon the construction and completion of ten miles of said road, with the cars running thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, said company may demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to under the provisions of the act of Congress hereinbefore referred to, approved March 3d, 1857, for the purpose of aiding in construction of said road;

And whereas satisfactory evidence has been filed with the governor of the State that ten miles of said road has been constructed and completed and that the cars are running thereon:

Now, therefore, this indenture witnesseth, that the party of the first part, in consideration of the premises, has granted, bargained, sold, conveyed, transferred, and assigned, and by these presents does grant, bargain, sell, convey, transfer, and assign, unto the party of the
432 second part and assigns one hundred and twenty sections of land, being the lands described in the lists hereto annexed, marked "A," which are hereby made a part of this deed, and to which reference is hereby particularly made, to have and to hold the same unto the said party of the second part and its assigns forever.

In witness whereof the party of the first part has caused the great seal of the State to be hereto affixed, and the indenture to be signed by the governor, pursuant to the authority aforesaid.

STEPHEN MILLER.

By the governor:

D. BLAKELY,
Secy. of State.

Signed, sealed, and delivered in presence of—
PENNOCK PUSEY.
W. R. WOOD.

{ SEAL OF THE STATE OF MINN. }

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this ninth day of October, A. D. 1865, personally appeared before me Stephen Miller, governor of Minnesota, and
433 acknowledged that he executed the foregoing conveyance as the deed of the State of Minnesota, pursuant to the authority vested in him by law.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] PENNOCK PUSEY,
Notary Public.

List A of lands referred to in annexed deed.

Description.	Section.	Town.	Range.	Acres.
S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼, and S. W. ¼	7	107	28	239. 68
S. E. ¼	17	"	"	160. 00
W. ½ of S. E. ¼, W. ½ N. E. ¼, and W. ½ sec	19	"	"	480. 00
N. W. fract. ¼	31	108	"	159. 69
N. fract. ½ of N. E. ¼ and E. fract. ½ of N. W. ¼	5	106	29	161. 55
S. E. ¼ and W. ½ sec	1	107	"	480. 00
Whole of	3	"	"	638. 30
Whole of	5	"	"	638. 20
Whole of	7	"	"	628. 20
Whole of	9	"	"	640. 00
Whole of	11	"	"	640. 00
N. W. ¼ and S. ½ sec	13	"	"	480. 00
Whole of	15	"	"	640. 00
Whole of	17	"	"	640. 00
E. ½ of sec., S. E. ¼ of N. W. ¼, N. ½ S. W. ¼, and lot 2	19	"	"	475. 05
Whole of	21	"	"	640. 00
Whole of	23	"	"	640. 00
W. ½	25	"	"	320. 00
Whole of	27	"	"	640. 00
434 Whole of	29	"	"	640. 00
N. E. ¼, E. ½ of S. E. ¼	31	"	"	240. 00
E. ½ N. W. ¼, S. W. ¼ S. W. ¼ and N. W. ¼ S. E. ¼	"	"	"	158. 39
Whole of	33	"	"	640. 00
N. E. ¼ and W. ½ sec	35	"	"	480. 00
N. W. ¼	13	108	"	160. 00

List A of lands—Continued.

	Description.	Section.	Town.	Range.	Acres.
	Whole of	15	"	"	618.24
	N. ½ N. E. ¼ of S. E. ¼ and lots 2 & 3	17	"	"	128.00
	Lots 2, 5, 6, 7, & 8 and N. W. ¼ N. W. ¼	19	"	"	231.15
	Whole of	21	"	"	620.30
	S. ½	23	"	"	320.00
	N. ½ & S. E. ¼	25	"	"	480.00
	Whole of	27	"	"	640.00
	Whole of	29	"	"	640.00
	Whole of	31	"	"	626.94
	Whole of	33	108	29	640.00
	S. ½ & N. W. ¼	35	"	"	480.00
	Whole of	1	106	30	636.92
	Whole of	3	"	"	636.20
	Whole of	5	"	"	634.48
	Whole of	7	"	"	617.18
	Whole of	9	"	"	640.00
	Whole of	11	"	"	480.00
	W. ½ and N. E. ¼	15	"	"	160.00
	N. W. ¼	17	"	"	640.00
	Whole of	19	"	"	155.65
	N. ½ of N. E. ¼ and N. ½ of N. W. ¼	1	107	"	559.32
	N. E. ¼, N. ½ of S. E. ¼, and W. ½ sec	3	"	"	330.75
	Whole of	5	"	"	636.92
435	Whole of	7	"	"	613.44
	Whole of	9	"	"	480.00
	N. E. ¼ and W. ½ sec				
	N. E. ¼ of N. E. ¼, lots 3, 4, 5, & 6, N. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, S. E. ¼ of S. W. ¼, and W. ½ of S. W. ¼	11	"	"	421.30
	N. E. ¼ of N. E. ¼ and S. E. ¼ of N. E. ¼	13	"	"	80.00
	Whole of	17	"	"	640.00
	S. E. ¼ and N. E. ¼ of S. W. ¼	19	"	"	200.00
	N. E. ¼ of N. E. ¼ and W. ½ of N. E. ¼	"	"	"	120.00
	E. ½ of N. W. ¼ N. W. ¼ of N. W. ¼, and N. E. ¼ of S. W. ¼	21	"	"	160.00
	N. E. ¼ N. W. ¼ and S. E. ¼	23	"	"	480.00
	S. ½ of N. E. ¼ of S. E. ¼ of N. W. ¼, and W. ½ of N. W. ¼	25	"	"	200.00
	S. E. ¼ of N. E. ¼, S. ½ of N. W. ¼ N. E. ¼ of S. E. ¼, S. ½ of S. E. ¼, W. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, and N. W. ¼ of S. E. ¼	29	"	"	400.00
	N. fract. ½ and S. fract. ½	31	"	"	616.40
	Whole of	33	"	"	640.00
	Whole of	35	"	"	640.00
	S. ½	9	108	"	320.00
	Whole of	11	"	"	551.90
	Whole of	13	"	"	640.00
	Whole of	15	"	"	640.00
	Whole of	17	"	"	640.00
	Lots 1, 4, 5, 6, 7, 8, N. W. ¼ of N. E. ¼ and S. ½ of S. W. ¼, (lot 1 relinquished by Co., Dec. 15, 1869)	19	"	"	381.61
	Whole of	21	"	"	640.00
	Whole of	23	"	"	640.00
436	Whole of	25	"	"	640.00
	Whole of	27	"	"	640.00
	Lots 1, 2, 3, 4, 5, E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼ and E. ½ of S. W. ¼	29	"	"	411.56
	Whole of	31	"	"	624.48
	Lot 4	33	"	"	36.00
	Whole of	35	"	"	620.20
	W. ½ of N. E. ¼, N. W. ¼ and S. ½	1	106	31	558.11
	E. fract. ½ of N. E. ¼	"	"	"	79.87
	Whole of	3	"	"	633.60
	Whole of	5	"	"	633.00
	Whole of	7	"	"	957.18
	Whole of	9	"	"	640.00
	Whole of	11	"	"	640.00
	E. ½, E. ½ of N. W. ¼, S. W. ¼ of N. W. ¼, and S. W. ¼	13	"	"	640.00
	Whole of	15	"	"	640.00
	Whole of	17	"	"	640.00
	Whole of	19	"	"	957.00
	Whole of	21	"	"	640.00
	E. ½ of N. E. ¼, S. E. ¼ of N. W. ¼, and S. ½	23	"	"	440.00
	N. E. ¼ and W. ½ of N. W. ¼	27	"	"	240.00
	Whole of	29	"	"	640.00
	N. fract. ½	31	"	"	477.83
	Whole of	1	107	31	636.80
	Whole of	3	"	"	631.80
	Whole of	5	"	"	632.80
	Whole of	7	"	"	944.44
	Whole of	9	107	31	640.00
437	Whole of	11	"	"	640.00
	N. E. ¼ and W. ½	13	"	"	480.00
	Whole of	15	"	"	640.00

List A of lands—Continued.

Description.	Section.	Town.	Range.	Acres.
Whole of	17	"	"	640. 00
Whole of	19	"	"	949. 04
Whole of	21	"	"	640. 00
N. ½ and S. W. ¼	23	"	"	480. 00
Whole of	25	"	"	640. 00
Whole of	27	"	"	640. 00
Whole of	29	"	"	640. 00
Whole of	31	"	"	956. 12
Whole of	33	"	"	640. 00
Whole of	35	"	"	640. 00
S. E. ¼	13	108	"	160. 00
Whole of	23	"	"	640. 00
Whole of	25	"	"	640. 00
E. ½, E. ½ of N. W. ¼, and S. W. ¼	27	"	"	560. 00
Lots 3, 4, 5, 6, 7, and E. ½ of N. E. ¼	29	"	"	280. 42
Whole of	31	"	"	945. 22
Lots 1, 2, 3, 4, 5, 6, 7, and S. ½ of S. E. ¼	33	"	"	323. 47
Whole of	35	"	"	640. 00
S. ½ of N. E. ¼, S. ½ of N. W. ¼, and S. ½	7	108	29	463. 01
S. ½	9	"	"	320. 00
Whole of	15	107	30	640. 00
Within the six-mile limits				63, 773. 77
W. ½ of S. E. ¼	29	107	28	80. 00
N. E. fract. ¼ and N. fract. ½ of N. W. ¼	1	106	29	239. 48
S. W. ¼ of S. W. ¼	5	"	"	40. 00
Whole of	7	"	"	633. 00
438 N. W. ¼ of N. W. ¼, S. ½ of N. W. ¼, and S. W. ¼	9	"	"	280. 00
N. ½ of N. E. ¼ and N. W. ¼	17	"	"	240. 00
S. E. ¼	35	107	"	160. 00
S. E. ¼	11	106	30	160. 00
Whole of	13	106	30	640. 00
E. ½ and S. W. ¼	15	"	"	480. 00
S. ½ of N. E. ¼, S. fract. ½ of N. W. ¼, & S. fract. ½	19	"	"	467. 55
N. ½ S. W. ¼ and N. ½ of S. E. ¼	21	"	"	560. 00
N. ½	23	"	"	320. 00
N. ½ and N. ½ of S. W. ¼	29	"	"	400. 00
N. W. ¼	3	105	31	162. 75
Whole of	5	"	"	647. 22
Whole of	25	106	31	640. 00
N. E. ¼ of S. E. ¼	27	"	"	40. 00
S. fract. ½	31	"	"	477. 89
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, S. E. ¼, and W. ½	33	"	"	600. 00
N. ½ S. W. ¼ and N. W. ¼ of S. E. ¼	35	"	"	520. 00
Within the fifteen-mile limits				7, 787. 89
N. W. ¼ and S. ½	3	108	29	486. 72
Whole of	5	"	"	314. 86
N. ½ of N. E. ¼ and N. ½ of N. W. ¼	7	"	"	154. 39
N. fract. ½	9	"	"	296. 95
N. E. ¼ N. W. ¼ and S. fract. ½	11	"	"	599. 03
S. E. ¼ of N. E. ¼ and S. ½ of S. E. ¼	35	109	"	120. 00
S. ½	1	108	30	320. 00
Minnesota Valley and Winona & St. Peter conflicting 6-mile limits				2, 291. 95
One undivided half is				1, 145. 97
S. ½	3	108	30	320. 00
N. E. fract. ¼ and S. ½	5	"	"	481. 48
439 Whole of	7	"	"	620. 96
N. ½	9	"	"	320. 00
Lots 4, 5, 6, 7, and 8	11	108	31	131. 00
N. E. ¼ and W. ½	13	"	"	480. 00
Whole of	15	"	"	640. 00
S. E. ¼ of N. E. ¼, S. W. ¼, and S. E. ¼	17	"	"	360. 00
S. ½ of N. E. ¼, S. E. fract. ¼, and lots 4, 5, 7, 8, 10, and 11	19	"	"	480. 62
W. ½, N. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, and lot 4	21	"	"	442. 50
Lots 1 and 2	29	108	31	73. 09
Minnesota Valley and Winona & St. Peter conflicting 15-mile limits				4, 349. 65
One undivided half is				2, 174. 83

RECAPITULATION.

	Acres.	Acres.
Within the six-mile limits	63,773.77	
Within the fifteen-mile limits	7,787.89	
		71,561.66
Conflicting with the six-mile limits of the Winona and Saint Peter Railroad	2,291.95	
One undivided half of which is	1,145.97	
		1,145.97
Conflicting with the fifteen-mile limits of the Winona and Saint Peter Railroad	4,349.65	
One undivided half of which is	2,174.83	
		2,174.83
Total quantity of lands conveyed by the annexed deed to the Minnesota Valley Railroad Company		74,882.46

Average by counties.—Memorandum.

Blue Earth	20,825.15
Brown	13,955.75
Watonwan	40,101.56
Total	74,882.46

I certify this list is correct according to the railroad lists on file at this office.

CHAS. McILRATH,
Commissioner.

STATE OF MINNESOTA,
Auditor's Office, ss:

I, Orlan P. Whitcomb, commissioner of the State land-office, do hereby certify that the foregoing is a correct copy of the deed by the State of Minnesota to the Minnesota Valley Railroad Company of the date of October 9th, 1865, as appears by the records in this office.

Witness my hand and official seal this 4th day of April, 1873.

[OFFICIAL SEAL.] ORLAN P. WHITCOMB,
Comr. State Land-Office.

441 EXHIBIT D.—H. E. MANN, *Ex.*

This indenture, made the fifth day of December, in the year of our Lord one thousand eight hundred and sixty-six, between the State of Minnesota, party of the first part, and the Southern Minnesota Railroad Company, a body corporate created and organized under and by the laws of the State of Minnesota, party of the second part, witnesseth:

Whereas by an act of Congress of the United States of America, approved on the third day of March, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," there was granted by the United States of America to the Territory of Minnesota for the purpose of aiding in the construction of certain railroads therein named, among others, from La Crescent, via Target Lake, up the valley of Root River to a point of junction with the Transit Railroad, east of range seventeen, every alternate section of land designated by odd numbers for six sections in width on each side of said roads and branches:

442 But in case it should appear that the United States should have, when the line or route of said roads should be definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be law

ful for any agent or agents, to be appointed by the governor of said Territory, or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as should be equal to such lands as the United States had sold or otherwise appropriated, or to which the rights of pre-emption had attached as aforesaid, which lands thus selected in lieu of those sold, and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, should be held by the Territory or future State of Minnesota for the use and purpose aforesaid;

And whereas it was further in and by said act provided that the said lands thereby granted to the said Territory or future State of Minnesota should be subject to the future disposal of the legislature
443 thereof, for the purposes therein expressed, and no other, and that the lands thereby granted to said Territory or future State should be disposed of by said Territory or future State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said roads and branches, might be sold, and when the said governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land thereby granted, not exceeding one hundred and twenty sections for each of said roads or branches having twenty continuous miles completed, as aforesaid, and included in a continuous length of twenty miles of each of said roads or branches, might be sold, and so from time to time until said roads and branches are completed;

And whereas the late legislative assembly of the late Territory of Minnesota, by an act approved on the twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act to execute the trust created by an act of Congress
444 entitled 'An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,'" and granting lands to certain railroad companies therein named, did authorize and empower the Root River Valley and Southern Minnesota Railroad Company, a then existing corporate body, to survey, locate, and construct, complete, and perpetually to have, use, maintain, and operate a railroad, with one or more tracks or lines, from La Crescent, via Target Lake, up the valley of Root River to a point of junction at Rochester, (with a railroad from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude,) east of range seventeen, in the Territory of Minnesota, provided the last-mentioned railroad is operated and constructed by way of Rochester, in accordance with the act of incorporation of said Root River Valley and Southern Minnesota Railroad Company, approved March second, 1855, and all subsequent amendments thereto, and did, by said last-named act of the legislature of said Territory, pro-
445 vide that all lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota, in and by virtue of the aforesaid act of Congress approved March 3, 1857, applicable to the said last-named roads or lines, are hereby disposed of and

confirmed to and upon the said Root River Valley and Southern Minnesota Railroad Company;

And whereas by a deed of trust executed by the Southern Minnesota Railroad Company on the first day of October, A. D. 1858, to Benjamin Pringle, of Batavia, New York, and Andrew G. Chatfield, of Belle Plaine, State of Minnesota, trustees, to which reference is made for further description, the said Southern Minnesota Railroad Company conveyed to said trustees all their right, title, and interest in said railroad and lands, hereinbefore mentioned, in trust for the payment of the first-mortgage bonds issued by said company;

And whereas the State of Minnesota, pursuant to the provisions of the constitution of said State, became the owner and possessor of six hundred of the first-mortgage bonds of said company, of denominations of one hundred dollars each;

And whereas said company made default in the payment of the
446 interest due upon said bonds, and the said trust-deed was fully foreclosed, and the lands, roads, and franchises therein conveyed sold pursuant to a power of sale contained in said deed, and all the right, title, and interest of said company therein bid off and purchased by the governor of said State of Minnesota, for and in the name of said State, pursuant to law;

And whereas the provisions of chapter one of the act of the legislature of the State of Minnesota entitled "An act to facilitate the construction of the Southern Minnesota Railroad and to amend and continue certain acts in relation thereto," approved March 4, 1864, it was provided "that all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company, acquired by State of Minnesota by virtue of any acts, deeds, sales, foreclosure, agreement, or thing by the said company hereinbefore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the governor of the State, or by reason of a sale of the same, or any portion thereof, by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same or any portion thereof by the governor of the State of Minne-
447 sota and bid in and purchased by the governor of the State Minnesota, for the benefit of the State of Minnesota, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the transit (via Winona and St. Peter) at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and in the several acts amendatory thereof, provided that the branch mentioned in said act running through the southern tier of counties shall commence at or east of range ten, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress approved March 3d, A. D 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," applicable to the said road or line of the said Southern Minnesota Railroad, hereinbefore specified, are hereby disposed of and
448 conferred to and upon the said Southern Minnesota Railroad Company, subject to the provisions of the act of Congress aforesaid, be, and the same are hereby, held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereinafter in this

act provided, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act, and all the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to
449 the State of Alabama to aid in the construction of certain railroads in said State,'" and granting certain lands to railroad companies therein named, approved May 22, A. D. 1857, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the Transit (now Winona and St. Peter) at Rochester, and pertaining to the line of roads and branches prescribed in said act of incorporation of the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, A. D. 1855, and the several acts amendatory thereof, are hereby granted and transferred to T. B. Stoddard, C. D. Sherwood, Luke Miller, Daniel Cameron, Clark W. Thompson, William D. Hurlbut, Hiram Walker, William Minghen, B. D. Sprague, H. W. Holly, Thomas McRoberts, and William Morris, their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company had or might or could have by reason of the passage of the said acts to said roads or lands, free and clear of all claims or liens thereon, and free from all liens and claims of the State of Minnesota against the same,
450 except such as are retained by the provisions of this act;

And whereas it was further provided in said act of the legislature of the State of Minnesota approved March 4th, A. D. 1864, that upon the completion of each and every consecutive twenty miles of said railroad, the governor of said State of Minnesota, acting for and in behalf of said State, shall execute, in the name of the State of Minnesota, under the great seal thereof, a full and absolute title in fee-simple to all the land' appertaining thereto which were conveyed to the said State or Territory of Minnesota by an act of Congress passed March 3d, A. D. 1857, and entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," and which would have accrued to the Root River Valley and Southern Minnesota Railroad Company or Southern Minnesota Railroad Company, or to which it would under any law of the Territory or State of Minnesota, or in any way or manner, be entitled, and upon the execution of said deed the said company, or the said person
451 or persons, shall have the absolute, full, and complete title to the said lands in fee-simple;

And whereas satisfactory evidence has been filed with the governor of the State that *a* consecutive twenty miles of said railroad has been constructed and completed, and that the cars are running thereon:

Now, therefore, this indenture witnesseth that the party of the first part, in consideration of the premises, has granted, bargained, sold, con-

veyed, transferred, and assigned, and by these presents does grant, bargain, sell, convey, transfer, and assign, five thousand seven hundred and fifty-three $\frac{95}{100}$ acres of land, being the lands described in the lists hereto annexed, marked "B," which are hereby made a part of this deed, and to which reference is hereby particularly made:

To have and to hold the same with the said party of the second part and its assigns forever.

In witness whereof the party of the first part has caused the great seal of the State to be hereto affixed, and this indenture to be signed by the governor, pursuant to the authority aforesaid.

WM. R. MARSHALL.

By the governor:

452 { SEAL OF THE STATE OF MIN. } H. C. ROGERS,
Sec. of State.

Signed, sealed and delivered in presence of—
PENNOCK PUSEY.
ISAAC H. CONWAY.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this fifth day of December, A. D. 1866, personally appeared before me Wm. R. Marshall, governor of Minnesota, and acknowledged that he executed the foregoing conveyance as the deed of the State of Minnesota, pursuant to the authority vested in him by law.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] PENNOCK PUSEY,
Notary Public.

453 *List B of lands referred to in annexed deed.*

Description.	Section.	Town.	Range.	Acres.
N. W. ¼ S. E. ¼	1	103	4	40.00
N. E. ¼ S. E. ¼	5	"	"	40.00
S. E. ¼ N. W. ¼ & S. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	7	"	"	120.00
N. W. ¼ S. E. ¼ & S. ¼ S. W. ¼	11	"	"	120.00
Lots 3 & 4 & S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	13	"	"	158.85
S. E. ¼ N. W. ¼ & W. ¼ N. W. ¼	17	"	"	120.00
N. ½ N. E. ¼ & S. E. ¼ N. W. ¼	19	"	"	120.00
N. E. ¼ S. W. ¼	21	"	"	40.00
N. E. ¼ N. W. ¼	27	"	"	40.00
S. E. ¼ N. E. ¼ & S. W. ¼ S. W. ¼	29	"	"	80.00
S. E. ¼ N. W. ¼	5	104	4	40.00
S. E. ¼ S. W. ¼	7	"	"	40.00
Lots 1 & 2	11	"	"	6.30
Lot 7	13	"	"	.80
N. W. ¼ S. E. ¼	17	"	"	40.00
N. W. ¼ S. E. ¼	33	"	"	40.00
N. W. ¼ S. E. ¼	35	"	"	40.00
S. W. ¼ N. E. ¼ & S. W. ¼ S. W. ¼	1	103	5	80.00
W. ½ N. W. ¼	7	"	"	71.09
E. ½ S. E. ¼ & N. W. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	9	"	"	200.00
N. E. ¼ N. E. ¼ & S. W. ¼ N. E. ¼	13	"	"	80.00
S. E. ¼ N. E. ¼	17	103	5	40.00
454 N. E. ¼ N. E. ¼ & S. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	19	"	"	120.00
S. E. ¼ N. E. ¼	21	"	"	40.00
N. W. ¼ N. E. ¼ & W. ¼ N. W. ¼ & N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	23	"	"	240.00
N. W. ¼ & S. E. ¼ S. E. ¼	27	"	"	200.00
N. E. ¼ S. E. ¼ & S. W. ¼ S. E. ¼	29	"	"	80.00
N. W. ¼ N. E. ¼ & N. ½ N. W. ¼	35	"	"	120.00
N. E. ¼ N. E. ¼ & S. W. ¼ N. W. ¼	1	104	5	79.90
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	11	"	"	120.00
S. E. ¼ S. W. ¼	13	"	"	40.00
S. E. ¼ S. W. ¼	15	"	"	40.00

List B of lands—Continued.

	Description.	Section.	Town.	Range.	Acres.
	S. E. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	23	"	"	80. 00
	W. ½ S. W. ¼	31	"	"	72. 20
	S. ½ S. E. ¼	25	105	5	80. 00
	N. E. ¼ S. W. ¼	27	"	"	40. 00
	N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	29	"	"	80. 00
	N. ½ N. E. ¼ & N. W. ¼ N. W. ¼	31	"	"	119. 56
	E. ½ N. W. ¼	33	"	"	80. 00
	E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	35	"	"	160. 00
	N. ½ & N. W. ¼ S. E. ¼	1	103	6	346. 81
	S. E. ¼ S. E. ¼	3	"	"	40. 00
	S. E. ¼ N. E. ¼	5	"	"	40. 00
	W. ½ N. W. ¼	7	"	"	73. 92
	S. E. ¼ N. E. ¼	15	103	6	40. 00
	S. W. ¼ N. W. ¼ & N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼ & S. E. ¼ S. W. ¼ & N. W. ¼ S. W. ¼	17	"	"	200 00
	N. E. ¼ N. E. ¼ & W. ½ S. W. ¼	19	"	"	114. 21
455	S. W. ¼ S. W. ¼	21	"	"	40. 00
	S. E. ¼ N. E. ¼	25	"	"	40. 00
	S. W. ¼ S. E. ¼	27	"	"	40. 00
	N. E. ¼ S. E. ¼	29	"	"	40. 00
	S. W. ¼ N. W. ¼	35	"	"	40. 00
	W. ½ N. E. ¼ & N. E. ¼ N. W. ¼	1	104	6	121. 87
	N. ½ N. W. ¼	3	"	"	81. 09
	W. ½ N. W. ¼ & S. E. ¼ S. E. ¼ & W. ½ S. W. ¼	5	"	"	200. 20
	S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	7	"	"	80. 00
	S. E. ¼ S. E. ¼ & S. W. ¼	9	"	"	200. 00
	S. W. ¼ N. W. ¼ & N. ½ S. W. ¼	13	"	"	120. 00
	S. E. ¼ N. E. ¼ & N. W. ¼ N. W. ¼	15	"	"	80. 00
	S. ½ N. E. ¼ & S. E. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	17	"	"	160. 00
	N. E. ¼ S. E. ¼	21	"	"	40. 00
	N. W. ¼ N. W. ¼	31	105	6	38. 25
	S. ½ S. E. ¼	33	"	"	80. 00
	S. ½ S. W. ¼	35	"	"	80. 00
	Lot 4	13	104	4	68. 90
					5, 753. 95

Average by counties.—Memorandum.

Houston	4, 996. 14
Winona	757. 81
Total	5, 753. 95

456 STATE OF MINNESOTA:

AUDITOR'S OFFICE, *St. Paul, April* 29, 1873.

I, Orlen P. Whitcomb, auditor of State and commissioner of the State land-office, do hereby certify that the foregoing is a true copy of the deed by the State of Minnesota to the Southern Minnesota Railroad Company, dated December 5th, 1866, as appears by the records in this office.

Witness my hand and official seal this 29th day of April, 1873.

ORLEN P. WHITCOMB,
Commissioner State Land-Office.

457 EXHIBIT E.—H. E. MANN, *Examiner.*

This indenture, made the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, between the State of Minnesota, party of the first part, and the Southern Minnesota Railroad Company, a body corporate created and organized under and by the laws of the State of Minnesota, party of the second part, witnesseth:

Whereas by an act of Congress of the United States of America, approved on the third day of March, in the year of our Lord one thousand

eight hundred and fifty-seven, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," there was granted by the United States of America to the Territory of Minnesota, for the purpose of aiding in the construction of certain railroads therein named, among others, from La Crescent via Target Lake up the valley of Root River to a point of junction with the Transit Railroad, east of range seventeen,

every alternate section of land designated by odd numbers for six
458 sections in width on each side of said road and branches: But in case it should appear that the United States should have, when the line or route of said roads should be definitely fixed, sold any sections or any parts thereof granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as should be equal to such lands as the United States had sold or otherwise appropriated, or to which the rights of pre-emption had attached as aforesaid, which lands, thus selected in lieu of those sold and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, should be held by the Territory or future State for the use and purpose aforesaid;

And whereas it was further in and by said act provided that
459 the said lands thereby granted to the said Territory or future State of Minnesota should be subject to the future disposal of the legislature thereof for the purpose therein named, and no other, and that the lands thereby granted to said Territory or future State

only in

the manner following, that is to say, that a quantity of land, not exceeding one hundred and twenty sections and included within a continuous length of twenty miles of said roads and branches, might be sold, and when the governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches are completed, then another quantity of land thereby granted, not exceeding one hundred and twenty sections for each of said roads or branches having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads or branches, might be sold, and so from time to time until said roads and branches are completed:

And whereas the legislative assembly of the late Territory of Minnesota, by an act approved on the twenty-second day of May, in the
460 year of our Lord one thousand eight hundred and fifty-seven, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,'" and granting lands to certain railroad companies therein named, did authorize and empower the Root River Valley and Southern Minnesota Railroad Company, a then existing corporate body, to survey, locate, and construct, complete, and perpetually to have, use, maintain, and operate a railroad, with one or more tracks or lines, from La

Crescent via Target Lake up the valley of Root River to a point of junction, at Rochester, (with a railroad from Winona via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude,) east of range seventeen, in the Territory of Minnesota, provided the last-mentioned railroad is operated and constructed by
461 way of Rochester, in accordance with the act of incorporation of said Root River Valley and Southern Minnesota Railroad Company, approved March second, 1855, and all subsequent amendments thereto, and did, by said last-named act of the legislature of said Territory, provide that all lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of the aforesaid act of Congress approved March 3d, 1857, applicable to the said last-named roads or lines, are hereby disposed of and confirmed to and upon the said Root River Valley and Southern Minnesota Railroad Company.

And whereas by a deed of trust executed by the Southern Minnesota Railroad Company on the first day of October, A. D. 1858, to Benjamin Pringle, of Batavia, New York, and Andrew G. Chatfield, of Belle Plaine, State of Minnesota, trustees, to which reference is made for further descriptions, the said Southern Minnesota Railroad Company conveyed to said trustees all their right, title, and interest in said railroad and lands hereinbefore mentioned, in trust for the payment of the first-mortgage bonds issued by said company;

462 And whereas the State of Minnesota, pursuant to the provisions of the constitution of said State, became the owner and possessor of six hundred of the first-mortgage bonds of said company, of denominations of one thousand dollars each;

And whereas said company made default in the payment of the interest due upon said bonds, and the said trust-deed was fully foreclosed, and the lands, road, and franchises therein conveyed sold, pursuant to a power of sale contained in said deed, and all the right, title, and interest of said company therein bid off and purchased by the governor of said State of Minnesota, for and in the name of said State, pursuant to law;

And whereas, the provisions of chapter one of the act of the legislature of the State of Minnesota entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," approved March 4, 1864, it was provided "that all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Com-
463 pany acquired by the State of Minnesota by virtue of any acts, deeds, sales, foreclosures, agreements, or thing by the said company hereinbefore done or suffered, or by reason of any forfeiture or by virtue of any law of the State," or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any portion thereof, by the governor of the State of Minnesota, and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the Transit , (now Winona & St. Peter's,) at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, and in the several acts amendatory thereof, provided that the branch mentioned in said act running through the southern tier of counties shall commence at or east of ten, and all the lands, interests, rights, powers,

nd privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress approved March 3d, A.
464 D. 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said road or line of the said Southern Minnesota Railroad hereinbefore specified, an' hereby disposed of and confirmed to and upon the said Southern Minnesota Railroad Company, subject to the provisions of the act of Congress aforesaid, be and the same are hereby held in trust, to be continued, granted and transferred for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all claims and liens thereon, and free from all liens and claims of Minnesota against the same, except such as are retained by the provisions of this act, and all the rights, privileges, franchises, and property and interest granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River
465 Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in t he construction of certain railroads in said Territory, and granting public la nds in alternate sections to the State of Alabama to aid in the constr uction of certain railroads in said State,'" and granting certain lands to railroad companies therein named, approved May 22, A. D. 1857, perta ining to the line of said road from La Crescent, up the Root River Valley, to a point of junction with the Transit (now Winona & St. Peter) at Rochester, and pertaining to the line of road and branches prescribed in said act of incorporation of the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, A. D. 1855, and the several acts amendatory thereof, are hereby granted and transferred to T. B. Stoddard, C. D. Sherwood, Luke Miller, Daniel Cameron, Clark W. Thompson, William D. Hurlbert, Hiram Walker, William
466 Mieghen, B. D. Sprague, H. W. Holley, Thomas McRoberts, and William Morris, their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, had, or might or could have, by reason of the passage of said acts, to said road or lands, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act;

And whereas by virtue of an act of the Congress of the United States entitled "An act relating to lands granted to the State of Minnesota, to aid in constructing railroads," approved July 13, 1866, it is, among other things, provided "that all the lands theretofore granted to the Territory and State of Minnesota to aid in the construction of railroads shall be certified to said State by the Secretary of the Interior from time to time," "and be disposed of by said State in the manner and upon the conditions" as modified by the provisions of said act of July 13, 1866, and that upon the completion of any ten
467 miles of road the State may sell one-half the quantity of lands that said State is authorized to dispose of on the completion of

twenty miles, and that the lands lying in place in any division of ten miles of road shall not be disposed of until the road shall be completed through an' coterminus with the same, and whenever the governor of said State is authorized to convey lands so certified, and through and coterminous with which any several division of ten miles of road shall be completed;

And whereas satisfactory evidence has been given to and filed with the governor of the State aforesaid that a continuous section of ten miles of the said road of said Southern Minnesota Railroad Company in said several acts named or intended has been constructed, completed, equipped, and operated as required by law, which said completed section of ten miles is in addition to the section of twenty miles named in a certain conveyance executed by said governor to said railroad company on the fifth day of December, A. D. 1866, and which said section of ten miles commences at the western terminus of said section of twenty
468 miles, in range six, and extends thence westwardly on the located line of said railroad to a point in range eight near the town of Rushford in the county of Fillmore:

Now, therefore, in consideration of the premises aforesaid, the said party of the first part has granted, bargained, sold, conveyed, and assigned, and by these presents does hereby grant, bargain, sell, convey, assign, and confirm unto the said party of the second part, its successors and assigns, from the lands and premises pertaining to said completed section of ten miles of said railroad, and lying and being in place upon said division of ten miles, amounting to five thousand eight hundred and twenty-seven $\frac{89}{100}$ acres, and described as follows, to wit:

In the county of Houston: The north half of the northeast quarter of section one, the southwest quarter of the southeast quarter, and the northwest quarter of the northeast quarter of section three; the northeast quarter of the northeast quarter and the north half of the southwest quarter of section five; and the northeast quarter of section seven; and the southeast quarter of the southeast quarter of section nine; and the north
469 half of the northeast quarter and the southwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter, and the southeast quarter of the northwest quarter of section thirteen; and the southwest quarter of the southeast quarter of section seventeen; and the southeast quarter of nineteen; and the northeast quarter of the northeast quarter, and the northwest quarter of the northwest quarter, and the southeast quarter of the northwest quarter of section twenty-one; and the northeast quarter of the southwest quarter, and the southwest quarter of the southwest quarter of section twenty-three; and the southwest quarter of the southeast quarter of section twenty-five; and the northwest quarter of the northwest quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-seven; and the northwest quarter of the northwest quarter of section twenty-nine; and south west quarter of the northeast quarter of section thirty-five, in township one hundred and three north, and range seven west of the fifth
470 principal meridian: and the northeast quarter of the northwest quarter of section one; and the north half of the northeast quarter, and the southeast quarter of the northeast quarter, and the north half of the northwest quarter, and the southeast quarter of the northwest quarter, and southwest quarter of the southeast quarter of section three; and the northwest quarter of the northwest quarter of section seven; and the northwest quarter of the northwest quarter of , and the southeast quarter of the northwest quarter of

section eleven; and the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section thirteen; and northeast quarter of the southeast quarter of section seventeen; and southeast quarter of the southwest quarter of section nineteen; and northwest quarter of the northeast quarter, and southeast quarter of the northeast quarter of section twenty-seven; and southwest of the
northeast quarter, and southwest quarter of the northwest quarter
471 of section thirty-three, in township one hundred and four, range seven.

In the county of Winona: The southeast quarter of the southeast quarter of section twenty-one; and the south half of the southwest quarter, and the south half of the southeast quarter of section twenty-five; and the southeast quarter of the northwest quarter, and the south half of the southeast quarter of section twenty-nine; and the northeast quarter and the north half of the northwest quarter, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section thirty-five, in township one hundred and five, range seven:

To have and to hold the same unto the said party of the second part, and to its successors and assigns, forever.

In witness whereof the party of the first part has caused the great seal of the State to be hereto affixed and the indenture to be signed by the governor, pursuant to the authority aforesaid.

[GREAT SEAL OF THE STATE.] WM. R. MARSHALL.

472 By the governor:

H. C. ROGERS,
Sec'y of State.

In presence of—
S. P. JAMISON.
PENNOCK PUSEY.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this sixteenth day of April, A. D. 1867, personally appeared before me Wm. R. Marshall, governor of the State of Minnesota, and acknowledged that he executed the foregoing conveyance as the deed of the State of Minnesota, pursuant to the authority vested in him by law.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] PENNOCK PUSEY,
Notary Public.

STATE OF MINNESOTA,
AUDITOR'S OFFICE,
Saint Paul, April 29th, 1873.

473 I, Orlen P. Whitcomb, auditor of State and commissioner of the State land-office, do hereby certify that the foregoing is a true copy of the deed by the State of Minnesota to the Southern Minnesota Railroad Company, dated April 16, A. D. 1867, as appears by the records in this office.

Witness my hand and official seal this 29th day of April, A. D. 1873.

[OFFICIAL SEAL.] ORLEN P. WHITCOMB,
Com'r State Land Office.

474 EXHIBIT F.—H. E. MANN, *Examiner.*

This indenture, made this sixth day of January, in the year of our Lord one thousand eight hundred and sixty-six, between the State of Minnesota, party of the first part, and the Southern Minnesota Railroad Company, a body corporate, created and organized under and by the laws of the State of Minnesota, party of the second part, witnesseth:

Whereas by an act of Congress of the United States of America, approved on the third day of March, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," there was granted by the United States of America to the late Territory of Minnesota, for the purpose of aiding in the construction of certain railroads therein named, among others, from La Crescent via Target Lake up the valley of Root River to a point of junction with the Transit Railroad, east of range seventeen, every alternate section of lands designated by odd numbers for six sections in width on each side of said roads and branches; but in
475 case it should appear that the United States should have, when the line or route of said roads should be definitely fixed, sold any sections or any part thereof granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or part of sections, as should be equal to such lands as the United States had sold or otherwise appropriated, or to which the rights of pre-emption had attached as aforesaid, which lands, thus selected in lieu of those sold, and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, should be held by the Territory or future State of Minnesota for the use and purpose aforesaid;

And whereas it was further in and by said act provided that the lands thereby granted to the said Territory or future State of Minnesota, should be subject to the future disposal of the legislature thereof for the purposes therein expressed, and no other, and that the lands
476 thereby granted to said Territory or future State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within continuous length of twenty miles of said roads and branches, might be sold, and when the said governor of Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land thereby granted, not exceeding one hundred and twenty sections, for each of said roads or branches having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads or branches, might be sold, and so from time to time until said roads and branches are completed;

And whereas the late legislative assembly of the late Territory of Minnesota, by an act approved on the twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An act to execute the trust created by an act of Congress entitled 'An

act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of
477 Alabama to aid in the construction of a certain railroad in said State,' " and granting lands to certain railroad companies therein named, did authorize and empower the Root River Valley and Southern Minnesota Railroad Company, a then existing corporate body, to survey, locate, and construct, complete, and perpetually to have, use, maintain, and operate a railroad with one or more tracks or lines from La Crescent, via Target Lake, up the valley of Root River, to a point of junction at Rochester, (with a railroad from Winona, via St. Peter, to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude,) east of range seventeen, in the Territory of Minnesota, provided the last-mentioned railroad is operative and constructed by way of Rochester, in accordance with act of incorporation of said Root River Valley and Southern Minnesota Railroad Company, approved March second, 1855, and all subsequent amendments thereto, and did, by said last-named act of the legislature of said Territory, provide that all lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of the aforesaid act of Congress, approved March 3, 1857, applicable to the said last-named roads or lines, are hereby disposed of, and confirmed to
478 and upon the said Root River Valley and Southern Minnesota Railroad Company;

And whereas by a deed of trust executed by the Southern Minnesota Railroad Company on the first day of October, A. D. 1868, to Benjamin Pringle, of Batavia, New York, and Andrew G. Chatfield, of Bell Plaine, State of Minnesota, trustees, to which reference is made for further description, the said Southern Minnesota Railroad Company conveyed to said trustees all their right, title, and interest in said railroad and lands hereinbefore mentioned, in trust for the payment of the first-mortgage bonds issued by said company;

And whereas the State of Minnesota, pursuant to the provisions of the construction of said State, became the owner and possessor of six hundred of the first-mortgage bonds of said company, of denomination of one thousand dollars each;

And whereas said company made default in the payment of the interest due upon said bonds, and the said trust-deed was fully foreclosed, and the lands, roads, and franchises therein conveyed sold, pursuant to a power of sale contained in said deed, and all the right, title, and interest of said company therein bid off and purchased by the governor of said State of Minnesota, for and in the name of said State, pursuant to law;

479 And whereas by the provisions of chapter one of the act of the legislature of the State of Minnesota entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," approved March 4, 1864, it was provided, "That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sales, foreclosure, agreement, or thing by the said company hereinbefore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same or any portion thereof by the governor of the State of Minnesota, for the benefit of the State of Minnesota pertaining to the line of roads from La Crescent up the Root River Valley to a point of junction with the Transit, (now Winona

& St. Peter,) at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and in the several acts amendatory thereof, provided that the branch mentioned in said act running through the south-
480 ern tier of counties, shall commence at east of range ten, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress approved March 3d, A. D. 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said road or line of the said Southern Minnesota Railroad, hereinbefore specified, are hereby disposed of and conferred to and upon the said Southern Minnesota Railroad Company, subject to the provisions of the act of Congress aforesaid, be and the same are hereby held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all claims and liens of the State of Minnesota against the same, except such as are retained by the provisions of this act, and all the rights, privileges, franchises, lands, property, and interest granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company by the several acts of the legislature of said Territory, the
481 one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named," approved May 22, A. D. 1857, pertaining to the lines of roads from La Crescent up the Root River Valley to a point of junction with the Transit, (now Winona & St. Peter,) at Rochester, and pertaining to the line of roads and branches prescribed in said act of incorporation of the Root River Valley and Southern Minnesota Railroad Company, approved March 2, A. D. 1845, and the several acts amendatory thereof, are hereby granted and transferred to T. B. Stoddard, C. D. Sherwood, Luke Miller, Daniel Cameron, Clark W. Thompson, William D. Hurlbert, Hiram Walker, William Mayhew, B. D. Sprague, H. W. Holly, Thomas McRoberts, and William Mason, their associates and successors, with all the im-
482 munities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company or Southern Minnesota Railroad Company had, or might, or could have, by reason of the passage of the said acts, to said roads or lands, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act;

And whereas it was further provided in said act of the legislature of the State of Minnesota, approved March 4, A. D. 1864, that the said person or persons or corporations should not fully acquire the title to road-beds, right of way, depot-grounds, culverts, bridges, turnouts, switches, rights, privileges, and franchises, and the track and line of the said Southern Minnesota Railroad Company, until said company should

fully complete and put in running order ten miles of said railroad, and upon the construction and complention of ten miles of said road, with the cars running thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to under
483 the provisions of the act of Congress hereinbefore referred to, approved March 3, A. D. 1857, for the purpose of aiding in the construction of said road;

And whereas satisfactory evidence has been filed with the governor of the State that ten miles of said road has been constructed and completed, and that the cars are running thereon:

Now, therefore, this indenture witnesseth that the party of the first part, in consideration of the premises, has granted, bargained, sold, conveyed, transferred, and assigned, and by these presents does grant, bargain, sell, convey, transfer, and assign unto the party of the second part and assigns, one hundred and twenty sections of land, being the lands described in the lists herein annexed marked "A," which are hereby made a part of this deed, and to which reference is hereby particularly made, to have and to hold the same unto the said party of the second part and its assigns forever.

In witness whereof the party of the first part has caused the great seal of the State to be hereto affixed, and the indenture to be signed by the governor, pursuant to the authority aforesaid.

{ SEAL OF THE STATE OF MINNESOTA. }

STEPHEN MILLER,
Governor of Minnesota.

Signed, sealed, and delivered in presence of—
ROBERT D. MITCHELL.

484 By the governor:

D. BLAKELY,
Sec'y of State.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on the sixth day of January, A. D. 1866, personally appeared before me Stephen Miller, governor of Minnesota, and acknowledged that he executed the foregoing conveyance as the deed of the State of Minnesota, pursuant to the authority vested in him by law.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.]

PENNOCK PUSEY,
Notary Public, Ramsey Co., Minn.

485 *List A of lands referred to in annexed deed.*

Description.	Section.	Town.	Range.	Acres.
1st. Within six-mile limits.				
N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	9	103	8	120. 00
E. ½ S. E. ¼ & S. W. ¼ S. E. ¼	13	"	"	120. 00
N. ½ S. E. ¼ & N. ½ S. W. ¼	21	"	"	160. 00
S. W. ¼ N. W. ¼	27	"	"	40. 00
S. W. ¼ N. W. ¼	33	"	"	40. 00
N. W. ¼	1	104	"	174. 39
S. ½ S. W. ¼	5	"	"	80. 00
N. E. ¼ & S. W. ¼ S. W. ¼	17	"	"	200. 00
N. E. ¼ N. E. ¼	19	"	"	40. 00
S. W. ¼ N. W. ¼	23	"	"	40. 00
N. ½ S. E. ¼	31	"	"	80. 00
S. ½ N. W. ¼	35	"	"	80. 00
N. ½ N. W. ¼	27	105	"	80. 00
W. ½ N. W. ¼	29	"	"	80. 00
N. E. ¼ & E. ½ S. E. ¼	33	"	"	240. 00
S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	"	"	"	80. 00
N. E. ¼ & S. ½ S. E. ¼	7	102	"	240. 00
S. E. ¼ S. E. ¼	15	103	9	40. 00
N. ½ S. W. ¼	17	"	"	80. 00
S. E. ¼ S. E. ¼	19	"	"	40. 00
S. E. ¼ N. W. ¼	25	"	"	40. 00
N. E. ¼ N. W. ¼	29	"	"	40. 00
S. W. ¼ N. E. ¼ & W. ½ S. E. ¼ & N. E. ¼ S. W. ¼	35	"	"	160. 00
S. W. ¼	27	105	"	160. 00
W. ½ S. E. ¼ & S. E. ¼ S. W. ¼	31	"	"	120. 00
486 N. E. ¼ N. E. ¼	1	103	"	40. 00
W. ½ N. W. ¼ & N. W. ¼ S. W. ¼	3	"	10	120. 64
W. ½ S. E. ¼	7	"	"	80. 00
E. ½ N. E. ¼ & N. ½ N. W. ¼	9	"	"	160. 00
S. E. ¼ N. W. ¼ & E. ½ S. W. ¼	13	"	"	120. "
N. W. ¼ N. E. ¼ & N. ½ N. W. ¼	15	"	"	120. "
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	35	"	"	160. "
N. W. ¼ & S. E. ¼ S. E. ¼	13	104	"	200. 00
E. ½ S. E. ¼	15	104	"	80. 00
W. ½ N. W. ¼ & N. W. ¼ S. W. ¼	23	"	10	120. 00
N. E. ¼ S. W. ¼	33	"	"	40. 00
E. ½ N. E. ¼ & N. E. ¼ S. E. ¼	23	103	"	120. 00
S. E. ¼ S. E¼	35	104	11	40. 00
N. ½ N. E. ¼ & N. W. ¼ N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	1	103	"	358. 50
E. ½ S. W. ¼ & N. W. ¼ S. W. ¼	3	"	8	120. 00
N. E. ¼ & N. W. ¼ N. W. ¼ & W. ½ S. E. ¼ & S. W. ¼	5	"	"	438. 28
N. E. ¼	7	"	"	160. 00
S. W. ¼ N. E. ¼ & E. ½ N. W. ¼ & S. W. ¼ N. W. ¼	9	"	"	160. 00
N. ½ & N. W. ¼ S. W. ¼	13	"	"	160. 00
S. E. ½ S. W. ¼	15	"	"	40. 00
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ N. W. ¼ & N. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & S. W. ¼ S. W. ¼	19	"	"	319. 60
S. E. ¼ N. E. ¼ & N. E. ¼ N. W. ¼ & S. ½ S. E. ¼ & S. ½ S. W. ¼	21	"	"	240. 00
N. E. ¼ N. E. ¼ & S. W. ¼ S. E. ¼	23	"	"	80. 00
N. E. ¼	25	"	"	160. 00
N. W. ¼ N. W. ¼	27	"	"	40. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. W. ¼ N. W. ¼ & S. E. ¼ & S. ½ S. W. ¼	29	"	"	400. 00
E. ½ S. E. ¼ & S. W. ¼ S. E. ¼ & S. ½ S. W. ¼	31	"	"	199. 35
N. W. ¼ N. W. ¼ S. W. ¼ S. E. ¼	33	"	"	40. 00
487 N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼ & S. E. ¼ S. W. ¼ & W. ½ S. W. ¼ S. E. ¼ N. E. ¼ & W. ½ N. W. ¼	1	104	"	40. 00
S. W. ¼ S. W. ¼	3	"	"	210. 17
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ N. W. ¼	5	"	"	122. 27
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. ½ S. E. ¼	7	"	"	40. 33
N. E. ¼ N. E. ¼	11	"	"	160. 00
N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	13	"	"	200. 00
S. ½ N. E. ½ & N. E. ¼ S. E. ¼ & W. ½ S. W. ¼	15	"	"	40. 00
W. ½ N. W. ¼ & E. ½ S. W. ¼ N. W. ¼ & S. E. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	17	"	"	120. 00
S. E. ¼ S. E. ¼	19	104	"	200. 14
S. ½ N. E. ¼ & S. E. ¼ & W. ½	21	"	"	200. 00
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. E. ¼ N. W. ¼	23	"	"	40. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. ½ S. E. ¼	25	"	"	560. 00
N. E. ¼ N. E. ¼	27	"	"	320. 00
N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	29	"	"	480. 00
S. ½ N. E. ¼ & S. E. ¼ N. W. ¼ & S. E. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	31	"	"	279. 68
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & N. W. ¼ S. E. ¼ & N. ½ S. W. ¼	33	"	"	280. 00
N. E. ¼ & N. ½ S. E. ¼ & S. W. ¼	35	"	"	400. 00
E. ½ N. W. ¼ & S. W. ¼ N. W. ¼ & E. ½ S. W. ¼ & N. W. ¼ S. W. ¼	21	105	"	240. 00
N. W. ¼ N. W. ¼	23	105	8	40. 00
N. E. ¼	25	"	"	160. 00
W. ½ N. E. ½ & N. E. ¼ S. E. ¼	29	"	"	120. 00
S. E. ¼ N. E. ¼ & W. ½ N. W. ¼ & S. ½	31	"	"	440. 00
N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	33	"	"	80. 00

List A of lands, &c.—Continued

	Description.	Section.	Town.	Range.	Acres.
	S. E. ¼ S. E¼	35	"	"	40. 00
	N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	1	102	9	120. 00
	E. ½ N. W. ¼ & N. W. ¼ N. W. ¼ & N. E. ¼ S. W. ¼	3	"	"	160. 04
	N. E. ¼ & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	5	"	"	280. 02
	W. ½ N. W. ¼ & N. ½ S. E. ¼ & N. ½ S. W. ¼	7	"	"	239. 61
	S. E. ¼ N. W. ¼ & N. W. ¼ S. E. ¼	9	"	"	80. 00
	S. W. ¼ N. E. ¼	11	"	"	40. 00
488	N. E. ¼ & N. E. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	1	103	"	239. 90
	S. ½ N. E. ¼ & S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & N. ½ S. E. ¼ & S. W. ¼ S. W. ¼	3	"	"	320. 12
	N. E. ¼ & W. ½ S. E. ¼ & S. W. ¼	5	"	"	401. 40
	E. ½ N. E. ¼ & N. W. ¼ N. E. ¼ & S. E. ¼ S. E. ¼	7	"	"	160. 00
	N. E. ¼ N. W. ¼ & S. W. ¼ N. W. ¼ & S. E. ¼ S. E. ¼	9	"	"	120. 00
	E. ½ & N. W. ¼	11	"	"	480. 00
	S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	13	"	"	80. 00
	N. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N. W. ¼ & N. E. ¼ S. E. ¼ & N. ½ S. E. ¼ & N. ½ S. W. ¼	15	"	"	480. 00
	E. ½ & N. W. ¼ & S. E. ¼ S. W. ¼	17	"	"	520. 00
	S. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & N E. ¼ S. E. ¼ &W. ½ S. E. ¼ & W. ½	19	"	"	538. 78
	N. E. ¼ & W. ½ S. E. ¼ & W. ½	21	"	"	560. 00
	N. E. ¼ S. E. ¼ & S. W. ¼ S. E. ¼	25	"	"	80. 00
	N. ½ N. W. ¼ & S. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & S. ½ S. W. ¼	27	"	"	280. 00
	S. E. ¼ N. W. ¼ & W. ½ N. W. ¼ & S. W. ¼	29	"	"	280. 00
	Sec	31	"	"	638. 52
	N. E. ¼ & E. ½ N. W. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	33	"	"	400. 00
	N. W. ¼ N. W. ¼	35	"	"	40. 00
	S. W. ¼ N. E. ¼	5	104	"	40. 00
	N. E. ¼ N. E. ¼	21	"	"	40. 00
	N. E. ¼ S. E. ¼	25	"	"	40. 09
	N. E. ¼ S. E. ¼	27	"	"	40. 00
	S. E. ¼ N. W. ¼	31	"	"	40. 00
	S. W. ¼ S. W. ¼	33	"	"	40. 00
	S. E. ¼ N. W. ¼	35	"	"	40. 00
	N. W. ¼ N. E. ¼ & N. ½ N. W. ¼ & N. E. ¼ S. E. ¼	25	105	"	160. 00
	S. W. ¼ S. W¼	31	"	"	39. 95
	S. W. ¼ S. W. ¼	1	102	"	40. 00
489	E. ½ S. E. ¼	3	102	10	80. 00
	N. ½ N. E. ¼ & N. ½ N. W. ¼	11	"	"	160. 00
	N. W. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	1	103	"	80. 28
	N. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & S. W. ¼ S. W. ¼	3	"	"	160. 00
	N. ½ N. W. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	5	"	"	158. 16
	N. E. ¼ & E. ½ N. W. ¼ & E. ½ S. E. ¼	11	"	"	320. 00
	E. ½ N. E. ¼ & S. W. ¼ S. W. ¼	13	"	"	120. 00
	S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	15	"	"	80. 00
	N. W. ¼ N. W. ¼ & N. W. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	21	"	"	120. 00
	N. ½ N. E. ¼ & N. E. ¼ N. W. ¼ & S. W. ¼ S. E. ¼	23	"	"	160. 00
	S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼ & W. ½ S. W. ¼	27	"	"	160. 00
	S. E. ¼ N. W. ¼	29	"	"	40. 00
	N. E. ¼ S. E. ¼	33	"	"	40. 00
	S. E. ¼ S. E. ¼ & W. ½ S. E. ¼ & E. ½ S. W. ¼	35	"	"	200. 00
	N. E. ¼ N. E. ¼	3	104	"	41. 09
	W. ½ S. W. ¼	7	"	"	74. 60
	S. W. ¼ N. E. ¼	13	"	"	40. 00
	W. ½ N. E. ¼	21	"	"	80. 00
	N. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & E. ½ N. W. ¼ & E. ½ S. W. ¼	23	"	"	280. 00
	N. E. ¼ & S. W. ¼ S. E. ¼	25	"	"	200. 00
	S. W. ¼ N. E. ¼ & S. W. ¼ N. W. ¼ & S. W. ¼ S. W. ¼	29	"	"	120. 00
	S. W. ¼ S. E. ¼ & S. ½ S. W. ¼	31	"	"	118. 15
	S. E. ¼ N. E. ¼ & S. E. ¼	33	"	"	200. 00
	N. W. ¼ N. E. ¼	35	"	"	40. 00
	S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	33	105	"	80. 00
	Sec	1	103	11	640. 04
	N. ½ & N. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	11	"	"	400. 00
	S. W. ¼ S. W. ¼	13	"	"	40. 00
	S. ½ N. W. ¼ & S. E. ¼ S. E. ¼	23	"	"	120. 00
	N. E. ¼ S. W. ¼	1	104	"	40. 00
	N. E. ¼ N. E. ¼	35	"	"	40. 00
	Within the 6-mile limits				23, 414. 20
490	2ND. WITHIN 15-MILE LIMITS.				
	N. W. ¼ N. E. ¼ & N. W. ¼	3	101	4	197. 66
	E. ½ S. E. ¼ & S. W. ¼ S. E. ¼	"	"	"	120. 00
	N. W. ¼ S. E. ¼	5	"	"	40. 00
	S. E. ¼ S. E. ¼	9	"	"	40. 00
	W. ½ N. E. ¼ & W. ½ N. W. ¼	11	"	"	160. 00
	N. W. ¼ S. W. ¼ & S. E. ¼ S. W. ¼	7	102	"	80. 00

List A of lands, &c.—Continued.

	Description.	Section.	Town.	Range.	Acres.
	S. E. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	15	"	"	80. 00
	S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	17	"	"	80. 00
	N. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼ & S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	19	"	"	163. 63
	N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	21	"	"	80. 00
	S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	23	102	4	80. 00
	N. E. ¼ N. E. ¼ & N. ¼ N. W. ¼	27	"	"	120. 00
	S. W. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	29	"	"	80. 00
	N. W. ¼ N. W. ¼	31	"	"	41. 31
	E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	33	"	"	120. 00
	N. E. ¼ S. W. ¼	"	"	"	40. 00
	S. W. ¼ N. W. ¼ & lot 5	35	"	"	77. 00
	N. E. ¼ S. E. ¼ & S. E. ¼ N. W. ¼	31	103	"	80. 00
	N. W. ¼ S. W. ¼	19	105	"	40. 21
	S. ½ N. E. ¼ & N. ½ N. W. ¼	1	101	5	159. 90
	N. ½ N. W. ¼	3	"	"	80. 33
	E. ½ S. E. ¼	9	"	"	80. 00
	N. W. ¼	13	"	"	160. 00
	S. ½ N. W. ¼	1	102	"	80. 00
	N. E. ¼ N. E. ¼	9	"	"	40. 00
	N. W. ¼ S. E. ¼ & W. ½ S. W. ¼ & N. E. ¼ S. W. ¼	13	"	"	160. 00
	N. W. ¼ N. W. ¼ & S. W. ¼ S. W. ¼	15	"	"	80. 00
	N. E. ¼ N. W. ¼	17	"	"	40. 00
	E. ½ & E. ½ N. W. ¼ & N. E. ¼ S. W. ¼	23	"	"	440. 00
491	S. ½ N. W. ¼ & E. ½ S. W. ¼	25	"	"	160. 00
	S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼ & N. W. ¼ N. W. ¼	29	"	"	160. 00
	N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	33	"	"	80. 00
	N. ½ N. E. ¼ & S. ½ N. W. ¼	35	"	"	160. 00
	N. W. ¼ N. W. ¼ & S. W. ¼	35	"	"	200 00
	S. W. ¼ S. W. ¼	33	103	"	40. 00
	S. ½ N. W. ¼ & S. E. ¼ S. E. ¼	35	"	"	120. 00
	S. ½ N. W. ¼	1	105	"	80. 00
	N. ½ N. E. ¼ & S. W. ¼ S. W. ¼	3	"	"	118. 25
	S. E. ¼ S. E. ¼	7	"	"	40. 00
	S. E. ¼ N. E. ¼ & N. ½ S. E. ¼ & N. E. ¼ S. W. ¼	11	"	"	160. 00
	N. W. ¼ N. E. ¼	13	"	"	40. 00
	N. W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼	19	"	"	80. 00
	N. E. ¼ & E. ½ S. E. ¼	23	"	"	240. 00
	S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	23	"	"	80. 00
	N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	25	"	"	80. 00
	N. W. ¼ N. E. ¼ & S. ½ N. W. ¼	27	"	"	120. 00
	N. W. ¼ N. E. ¼ & E. ½ N. W. ¼	29	"	"	120. 00
	S. E. ¼ S. E. ¼ & N. W. ¼ S. W. ¼	1	101	6	80. 00
	N. W. ¼ N. W. ¼	15	"	"	40. 00
	S. W. ¼ N. E. ¼	17	"	"	40. 00
	N. ½ N. E. ¼	5	102	"	82. 89
	N. W. ¼ S. W. ¼ & S. ½ S. W. ¼	9	"	"	120. 00
	E. ½ N. E. ¼ & N. E. ¼ S. E. ¼ & S. W. ¼ N. W. ¼	17	"	"	160. 00
	S. E. ¼ N. E. ¼	29	102	6	40. 00
	S. W. ¼ S. W. ¼	31	103	"	38. 44
	N. W. ¼ N. W. ¼	1	105	"	38. 90
	N. E. ¼ S. W. ¼	3	"	"	40. 00
	S. W. ¼ S. E. ¼	5	"	"	40. 00
	N. E. ¼ N. E. ¼ & S. E. ¼ S. W. ¼	13	"	"	80. 00
	S. W. ¼ S. W. ¼	19	"	"	37. 96
492	N. E. ¼ S. W. ¼	23	"	"	40. 00
	N. W. ¼ N. E. ¼	5	101	7	38. 46
	N. E. ¼ N. E. ¼	11	102	"	40. 00
	N. W. ¼ N. W. ¼	17	"	"	40. 00
	S. W. ¼ N. E. ¼	21	"	"	40. 00
	N. W. ¼ & S. W. ¼ S. W. ¼	31	103	"	201. 35
	N. E. ¼ S. E. ¼	33	"	"	40. 00
	N. W. ¼ S. E. ¼	35	"	"	40. 00
	S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	3	101	8	80. 00
	E. ½ S. W. ¼	7	"	"	80. 00
	W. ½ N. E. ¼ & W. ½ S. E. ¼	11	"	"	160. 00
	W. ½	11	"	"	320. 00
	N. W. ¼ S. E. ¼	15	"	"	40. 00
	N. W. ¼ S. W. ¼	17	"	"	40. 00
	S. ½ S. E. ¼	3	102	"	80. 00
	S. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	5	"	"	80. 00
	S. W. ¼ S. E. ¼ & N. W. ¼ S. W. ¼	7	"	"	80. 85
	S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼	9	"	"	80. 00
	S. E. ¼ N. W. ¼ & N. E. ¼ S. E. ¼	11	"	"	80. 00
	N. W. ¼ N. W. ¼	13	"	"	40. 00
	S. W. ¼ S. W. ¼	23	103	"	40. 00
	S. ½ & N. W. ¼	25	"	"	480. 00
	S. ½ & N. E. ¼	27	"	"	480. 00
	E. ½ N. W. ¼	"	"	"	80. 00

List A of Lands, &c.—Continued.

Description.	Section.	Town.	Range.	Acres.
S. ½ N. E. ¼ & E. ½ N. W. ¼ & S. W. ¼	33	"	"	320. 00
N. W. ¼ & S. E. ¼	35	"	"	320. 00
E. ½ S. W. ¼ & S. W. ¼ S. W. ¼	"	"	"	120. 00
N. E. ¼ N. E. ¼	5	101	9	39. 52
S. E. ¼	7	"	"	160. 00
W. ½ S. W. ¼	9	"	"	80. 00
S. E. ¼ N. E. ¼ & S. ½ N. W. ¼	17	"	"	120. 00
493 W. ½ S. W. ¼	21	"	"	80. 00
W. ½ N. E. ¼ & S. ½ N. W. ¼ S. W. ¼	27	"	"	320. 00
S. E. ¼ S. W. ¼	7	102	"	40. 00
N. W. ¼ & S. E. ¼	13	"	"	320. 00
S. ½ S. W. ¼	15	"	"	80. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	17	"	9	80. 00
W. ½ N. W. ¼ & N. E. ¼ S. E. ¼	"	"	"	124. 00
S. W. ¼	"	"	"	160. 00
N. E. ¼ N. E. ¼ & S. W. ¼ S. W. ¼	19	"	"	80. 20
N. E. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	23	"	"	80. 00
S. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	31	"	"	80. 79
S. E. ¼	1	101	10	160. 00
S. E. ¼ N. W. ¼ & N. ½ S. W. ¼	5	"	"	120. 00
W. ½ N. W. ¼ & E. ½ S. E. ¼	7	"	"	156. 87
S. W. ¼	13	"	"	160. 00
E. ½ & N. W. ¼	17	"	"	480. 00
N. ½ S. W. ¼	17	"	"	80. 00
N. E. ¼ N. E. ¼	21	"	"	40. 00
S. ½ N. E. ¼ & S. ½ N. W. ¼ & S. ½	11	102	"	480. 00
N. ½ N. W. ¼ & W. ½ S. W. ¼	13	"	"	160. 00
E. ½ N. E. ¼ & N. W. ¼ N. W. ¼	15	"	"	120. 00
W. ½ N. W. ¼ & S. E. ¼ N. W. ¼	17	"	"	120. 00
S. E. ¼ S. E. ¼ & W. ½ S. W. ¼	"	"	"	120. 00
S. E. ¼ S. W. ¼	23	"	"	40. 00
N. E. ¼ N. E. ¼ & W. ½ N. E. ¼ & W. ½ S. W. ¼	25	"	"	200. 00
S. ½ S. W. ¼	29	"	"	80. 00
N. E. ¼ & N. ½ S. E. ¼	35	"	"	240. 00
N. ½ S. W. ¼	"	"	"	80. 00
S. E. ¼	1	101	11	160. 00
N. W. ¼ S. E. ¼	3	102	"	40. 00
S. E. ¼ N. E. ¼	11	"	"	40. 00
494 N. E. ¼ N. E. ¼	13	"	"	40. 00
N. E. ¼ S. E. ¼	21	"	"	40. 00
S. W. ¼ S. W. ¼	23	"	"	40. 00
S. E. ¼ N. E. ¼	31	"	"	40. 00
W. ½ S. E. ¼	33	"	"	80. 00
N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	35	"	"	80. 00
W. ½ N. W. ¼	"	"	"	80. 00
S. W. ¼ N. W. ¼	27	103	11	40. 00
N. ½ N. E. ¼ & N. ½ N. W. ¼	35	"	"	160. 00
N. E. ¼ S. W. ¼	"	"	"	40. 00
N. W. ¼ N. E. ¼	9	102	12	40. 00
S. E. ¼ N. E. ¼	17	"	"	40. 00
S. W. ¼ N. W. ¼	25	"	"	40. 00
N. W. ¼ N. E. ¼ & S. ½ N. E. ¼ & S. ½ N. W. ¼	27	"	"	200. 00
S. W. ¼ S. E. ¼	3	103	"	40. 00
N. ½ S. E. ¼	19	"	"	80. 00
E. ½ S. E. ¼	23	"	"	80. 00
E. ½ N. W. ¼ & S. W. ¼ S. E. ¼ & W. ½ S. W. ¼	25	103	12	200. 00
N. E. ¼ N. W. ¼	27	"	"	40. 00
W. ½ N. W. ¼ & N. ½ S. E. ¼ & N. ½ & S. W. ¼	31	"	"	247. 80
E. ½ N. E. ¼ & E. ½ S. W. ¼	35	"	"	160. 00
N. W. ¼ N. E. ¼	11	102	13	40. 00
N. W. ¼ S. W. ¼	13	103	"	40. 00
N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼	25	"	"	80. 00
N. W. ¼ S. E. ¼	"	"	"	40. 00
N. E. ¼ N. W. ¼	33	104	14	40. 00
N. W. ¼ N. E. ¼ & S. E. ¼ N. E. ¼	19	106	5	80. 00
N. W. ¼ S. W. ¼	33	"	"	40. 00
S. E. ¼ N. W. ¼ & E. ½ S. E. ¼	35	"	"	120. 00
N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼	"	"	"	80. 00
W. ½ S. W. ¼	"	"	"	80. 00
495 N. W. ¼ N. W. ¼	13	"	6	40. 00
S. W. ¼ S. W. ¼	15	"	"	40. 00
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼ & S. E. ¼ S. E. ¼	25	"	"	120. 00
N. E. ¼ S. E. ¼	29	"	"	40. 00
E. ½ N. W. ¼ & N. W. ¼ S. E. ¼	33	"	"	120. 00
S. E. ¼ N. E. ¼ & S. E. ¼ S. E. ¼	35	"	"	80. 00
N. E. ¼ S. W. ¼	31	104	12	40. 00
N. E. ¼ S. E. ¼	33	"	"	40. 00
E. ½ S. W. ¼	33	"	"	80. 00
Within 15-mile limits				17, 402. 35

List A of lands, &c.—Continued.

Description.	Section.	Town.	Range.	Acres.
3D. CONFLICTING WITH SIX-MILE LIMITS OF THE WINONA & ST. PETER RAILROAD.				
S. E. ¼ N. E. ¼	19	105	10	40. 00
S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼	11	105	11	80. 00
Conflicting with six-mile limits of the Winona and St. Peter Railroad				120. 00
One undivided half of which is				60
4TH. CONFLICTING WITH THE FIFTEEN-MILE LIMITS OF THE WINONA & ST. PETER RAILROAD.				
N. W. ¼ N. W. ¼	3	105	7	40. 94
N. W. ¼ N. E. ¼	5	"	"	38. 97
S. W. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	7	"	"	80. 00
N. W. ¼ N. E. ¼ & S W. ¼ N. W. ¼	9	"	"	80. 00
S. E. ¼ N. E. ¼ & S. ¼ S. E. ¼	13	"	"	120. 00
W. ¼ S. W. ¼	17	"	"	80. 00
S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	23	"	"	80. 00
N. ½ S. E. ¼ & S. W. ¼	"	"	"	240. 00
N. E. ¼ & S. E. ¼ N. W. ¼	25	"	"	200. 00
N. ½ S. E. ¼ & N ½ S. W. ¼	"	"	"	160. 00
496 N. E. ¼ S. E. ¼ & S. W. ¼ S. W. ¼	17	105	8	80. 00
S. E. ¼ N. E. ¼ & N. W. ¼	19	"	"	197. 69
S. E. ¼ S. W. ¼	19	"	9	40. 00
N. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	29	"	"	80. 00
N. ½ N. E. ¼	25	"	10	80. 00
N. E. ¼ N. W. ¼	29	104	12	40. 00
N. W. ¼ S. E. ¼	21	"	13	40. 00
S. E. ¼ N. W. ¼	23	"	"	40. 00
S. E. ¼ N. W. ¼	25	"	"	40. 00
S. W. ¼ N. E. ¼ & N. E. ¼ S. W. ¼	9	105	14	80. 00
N. ½ N. W. ¼	7	107	10	77. 27
N. ½ N. E. ¼ & N. W. ¼ S. E. ¼	17	"	"	120. 00
N. E. ¼ & S. W. ¼ S. E. ¼	1	"	11	199. 88
N. W. ¼ N. W. ¼ & S. W. ¼ S. E. ¼	3	"	"	79. 82
S. W. ¼ S. W. ¼	5	"	"	40. 00
W. ½ & S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	7	"	"	398. 04
N. ½ N. E. ¼	9	"	"	80. 00
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	11	"	"	120. 00
N. W. ¼	11	"	"	160. 00
W. ½ & S. W. ¼ N. E. ¼	15	"	"	360. 00
E. ½ S. W. ¼	17	"	"	80. 00
W. ½ N. E. ¼	23	"	"	80. 00
S. E. ¼ S. W. ¼	29	108	"	40. 00
S. E. ¼ S. E. ¼ & S. W. ¼	33	"	"	200. 00
N. E. ¼	3	107	12	160. 63
N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼	5	"	"	80. 81
N. ½ N. E. ¼ & N. E. ¼ N. W. ¼ & N. W. ¼ S. E. ¼	9	"	"	160. 00
E. ½ N. E. ¼	11	"	"	80. 00
N. W. ¼ S. E. ¼ & W. ½ S. W. ¼	17	108	"	120. 00
S. ½ N. W. ¼ & N. ½ S. E. ¼	19	"	"	153 41
W. ½ N. W. ¼	25	"	"	804. 00
497 N. ½ S. W. ¼	31	"	"	74. 92
S. E. ¼ N. E. ¼ & E. ½ S. E. ¼ & S. W. ¼ S. E. ¼ & W. ½ S. W. ¼	35	"	"	240. 00
S. ½ N. E. ¼	5	107	13	80. 00
E. ½ N. E. ¼ & S. ½	3	108	"	395. 58
S. W. ¼	11	"	"	160. 00
N. E. ¼	15	"	"	160. 00
N. ½ S. E. ¼	23	"	"	80. 00
W. ½ N. W. ¼	27	"	"	80. 00
S. ½ N. E. ¼ & N. W. ¼ N. W. ¼ & S. E. ¼ N. W. ¼ & S. E. ¼ S. W. ¼	29	"	"	200. 00
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	27	109	"	120. 00
N. W. ¼ & N. ½ S. W. ¼	"	"	"	240. 00
S. W. ¼ S. W. ¼	27	109	13	40. 00
N. W. ¼ N. E. ¼ & W. ½ S. E. ¼	33	"	"	120. 00
N. W. ¼ & S. E. ¼	35	"	"	320. 00
Conflicting with fifteen-mile limits of Winona & St. Peter Railroad				7, 017. 96
One undivided half of which is				3, 508. 98

98 RECAPITULATION.

Within the six-mile limits	23,414.20	
Within the fifteen-mile limits	17,402.32	
		40,816.52
Conflicting with the six-mile limits of the Winona & St. Peter Railroad	120.00	
One undivided half of which is	60.00	
		60.00
Conflicting with the fifteen-mile limits of the Winona & St. Peter Railroad	7,017.96	
One undivided half of which is	3,508.98	
		3,508.98
Total quantity of lands conveyed by the annexed deed to the Southern Minnesota Railroad Company		44,385.50

Forty-four thousand three hundred eighty-five and 50-100 acres.

499 STATE OF MINNESOTA:

AUDITOR'S OFFICE,
St. Paul, April 17th, 1873.

I, Orlen P. Whitcomb, auditor of State and commissioner of the State land-office, do hereby certify that the foregoing is a true copy of the deed by the State of Minnesota to the Southern Minnesota Railroad Company, dated January 6, 1866, as appears by the records in this office.

Witness my hand and official seal this 17th day of April, A. D. 1873.

[OFFICIAL SEAL.] ORLEN P. WHITCOMB.
Comr. State Land-Office.

500 An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State. March 3, 1857.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That there be, and is hereby, granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads, from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch, via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the legislature of said Territory may determine; from Saint Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, with a branch, via Faribault, to the north line of the State of Iowa, west of range sixteen; from Winona, via Saint Peter, to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude; also from La Crescent, via Target Lake, up the valley of Root River, to a point of junction with the last-mentioned road, east of range
501 seventeen, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the

Grant of lands to Minnesota for railroads, &c.

Grant in lieu of lands pre-empted or sold.

right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption-rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid; provided that the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches; provided further, that the lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; and provided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

Lands, how applied.

Act not to apply to reservations except as to right of way.

Price of alternate sections doubled.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads and branches, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

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Object of grant.

SEC. 3. And be it further enacted, That the said lands hereby granted to the said Territory or future State shall be subject to the future disposal of the legislature thereof for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

Railroads to be a highway for Government.

Lands, how disposed of.

SEC. 4. And be it further enacted, That the land hereby granted to said Territory or future State shall be disposed of by said Territory or future State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty

miles of each of said roads and branches, may be sold; and when the governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold; and so from time to time, until said roads and branches are completed; and if any of said roads or branches is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

Transportation of mails.

SEC. 5. And be it further enacted, That the United States mail shall be transported over said roads and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct; provided that until such price is fixed by law the Postmaster-General shall have the power to determine the same.

This act not to apply to lands in Indian territory till their title is extinguished.

SEC. 6. And be it further enacted, That in case any lands on the line of said roads or branches are within any Indian territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State, until the Indian title to the same shall have been extinguished.

Similar grant to Alabama.

503 SEC. 7. And be it further enacted, That there be, and is hereby, granted to the State of Alabama, for the purpose of aiding in the construction of a railroad "from the line of Georgia, on the Chattahoochee River, to the city of Mobile, Alabama," through the counties of Henry, Dale, Coffee, Covington, Conecuh, Baldwin, and Mobile, and a branch railroad "from Eufaula to Montgomery, through the counties of Barbour, Pike, Macon, and Montgomery," chartered by the State of Alabama by an act entitled "An act to authorize the Savannah and Albany Railroad Company to extend their railroad from the line of Georgia, on the Chattahoochee River, to the city of Mobile, Alabama, and to extend a branch road from Eufaula to Montgomery," approved December twentieth, eighteen hundred and fifty-three, alternate sections of the public lands to the same extent, and in the same manner, and upon the same limitations and restrictions in every respect as was granted to aid in the construction of other railroads under an act of Congress entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," approved June three, eighteen hundred and fifty-six.

Approved March 3, 1857.

May 22, 1857.

504 An act to execute the trust created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," and granting certain lands to railroad companies therein named.

Be it enacted by the legislative assembly of the Territory of Minnesota:

Incorporation.

SECTION 1. All such persons who shall become stockholders in the company hereby incorporated shall be, and are hereby, created and declared a body-politic and corporate, by the name and style of the Minnesota and Pacific Railroad Company, and by that name shall have perpetual succession, and shall have and enjoy all the powers, privileges, franchises, and immunities incident to a corporation; may acquire, by purchase or otherwise, and hold, convey, sell, and lease, property and estate, either real, or personal, or mixed; may make, have, and use a common seal, and alter or renew the same at pleasure; may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended against, contract and be contracted with, and shall never set up defence of usury to any contract in any court, and generally may do and perform all and singular the acts and matters which shall be necessary and conducive to the well-being of said corporation.

Locate road, &c.

505 SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad, with one or more tracts or lines of rails, on such route and with such alignment and graduation as said company shall think proper, from Stillwater, by way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood River, with a branch from St. Anthony, via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina River.

Route.

Right of way, how secured.

SEC. 3. The corporation shall have the right to enter upon any lands for the purpose of making surveys and for the right of way, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding two hundred feet in width throughout the entire line of its said railroads, may enter upon and take possession of and use all and singular any lands, streams, and materials of every kind beyond the width of two hundred feet for the location and construction of depots and stopping stages, (stations,) station-grounds, and houses, and for the purpose of constructing bridges, dams, embankments, excavations, spoil-banks, turn-outs, engine-houses, shops, and other buildings necessary for the constructing, completing, altering, maintaining, preserving, and complete operation of said railroads; all such lands, waters, materials, and privileges belonging to the Territory or future State of Minnesota are hereby granted to said corporation for said purposes and this act shall be sufficient notice to all persons claiming any interest in the same; but lands owned or belonging to any persons, company, or corporation may be taken and appropriated for the purpose aforesaid, and shall be valued and paid for in the manner hereinafter provided.

Capital stock.

SEC. 4. The capital stock of said corporation shall be five millions of dollars, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors,

who shall have power to require the payment of sums subscribed by the stockholders of such amount, in such manner, at such times, and on such terms as they deem proper; and on refusal or neglect on the part of stockholders or any of them to make payment agreeably to such requisitions, the share or shares of such delinquents may, after thirty days' public notice, be sold at public auction,
506 under such rules as said board of directors may prescribe, the surplus money, if any remain after deducting the payments due, with interest, and the necessary costs of sale, to be paid to such delinquent stockholder. The board of directors hereby appointed shall cause books to be opened for the subscriptions to said stock in the city of Saint Paul, upon the acceptance of this charter, of which notice shall be given by publication in two or more newspapers published in Saint Paul, and in one or more published in Saint Anthony, and said books shall remain open ten days thereafter; and the said directors may thereafter also cause books to be opened in such manner and at such other places and times as they shall direct, and may from time to time increase the capital stock to an aggregate amount not exceeding twenty millions of dollars, whenever they may deem it expedient for the operations of said corporation to make such increase.

Books to be opened.

SEC. 5. All the affairs of said corporation shall be managed by a board of fifteen directors, who shall be stockholders, and a majority of whom shall be citizens of the Territory, and who are hereby invested with all the powers of said corporation. They shall be chosen annually by ballot by the stockholders, at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such places as shall be prescribed by the board of directors, and stated in such notice. The votes shall be delivered in person or by proxy, duly authorized; and in all cases in which stockholders shall vote, each share of stock shall be entitled to one vote, and in all elections for directors those stockholders, equal to the number to be elected, having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company; and if, from any cause, an election of directors shall not be had at the time when, by the provisions of this act or by the by-laws of said corporation, it should be had, the same may be held at any other time, on notice to be given as aforesaid; and until such election be had the directors of the preceding year shall continue to act, and the corporation hereby created shall not forfeit nor lose any of its privileges, franchises, or immunities by reason of the irregularity or want of such election.

Board of directors.

Elections, how conducted.

SEC. 6. The following-named persons are hereby ap-
507 pointed and shall constitute the first board of directors, whose term of office shall continue until an election shall be held and their successors duly elected, as herein provided, viz: F. R. Delano, William Willim, Alex. Ramsey, Edmund Rice, R. R. Nelson, William L. Ames, Richard Chute, Henry T. Wells, Abraham M. Fridley, Dwight Wood-

First board of directors.

bury, Franklin Steele, S. B. Lowry, J. D. Crittenden, Charles H. Oakes, Daniel Basset, whose duties and powers shall commence and be in force from and after the passage of this act.

Powers of the company.

SEC. 7. The said company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering, regulating, and securing the affairs, business, and interests of the company; provided, that the same be not repugnant to the Constitution and laws of the United States or the laws of this Territory; and the board of directors shall have power to establish such rates of toll and charges for the conveyance of persons and property upon its said railroads as they shall from time to time direct and determine, and to change the same, and to levy and collect the same for the use of the said company. The width of the track shall be four feet eight and a half inches, and the iron used in the track shall be of approved quality and pattern, and the railroad shall be completed, furnished, and equipped in a style and of a quality equal to the average of other first-class western railroads. The construction of wheels, the form and size of cars, the weight of loads, the rate of speed, terms of running, connections with other railroads, and all other matters and things respecting the use of said railroads, shall be in conformity to such rules and regulations as said board of directors shall from time to time determine and establish; provided, that at all crossings of the track of said railroad or branch with the track of any other railroad, the engine or cars arriving at such crossing shall come to a dead halt or stop before crossing the same. The said company shall have the right and authority to construct their said railroad and branches upon and along, across, over, or under any public or private highway, road, street, plank-road, or railroad, if the same shall be necessary; but the said company shall put such highway, road, street, plank-road, or railroad in such condition and state of repair as not to impair or interfere with its free and proper use; and the said company shall have the right and authority to erect and maintain all the necessary bridges for the use of their said railroad over any stream of water or water-course, at such points of crossing the same as they may locate the said road or branches, with all necessary abutments, piers, or other foundations; and said company shall have power to connect the said railroad or branches with any other railroad or branch thereof in this Territory or State, or in the State of Wisconsin, and to operate the same in connection with such other railroad or branch, and under such name and on such terms as may be agreed upon by and between said companies, or to purchase from any other railroad company the whole or any part of any railroad or branch railroad owned by such company.

Width of track.

Trains to halt at crossings.

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Shall have power to connect with other roads.

Quorum of board.

SEC. 8. A majority of the board of directors shall constitute a quorum for the transaction of business, and shall meet at such times and places, and be convened in such man-

ner as they shall decide upon; shall elect one of their own number to be president and one to be vice-president. The president shall, when present, preside at all meetings of the board of stockholders, and when absent the vice president shall discharge the duties of president; and in the case of the absence of president and vice-president, the electors may elect a president pro tem., and shall have power to constitute an executive committee, and prescribe its powers and duties; to appoint a secretary, treasurer, and such engineers, superintendents, agents, and other officers as they may deem necessary; fix their compensation, and demand adequate security for the faithful discharge of their duties, and fill any vacancy which may occur in their own board. President.

SEC. 9. The directors shall issue certificates to the stockholders for the number of shares subscribed for or held by them respectively in such corporation, signed by the president and secretary, subject, however, to all the payments due and to become due thereon, which stock shall be transferable on the books of said company in such manner and under such regulations as shall be provided by the by-laws of the company. Certificates, how issued.

SEC. 10. At each annual meeting of the stockholders the directors shall make a full exhibit and statement of the affairs of the company, and of their proceedings during the previous year; and special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-fourth in amount of the capital stock, on like notice as that required for annual meetings, 509 specifying the object of the meeting, and no business shall be transacted at such special meeting except such as shall be particularly set forth in such notice, nor any vote taken unless a majority of all the stock of said company shall be then and there represented in person or by proxy. Annual exhibit.

SEC. 11. The said company is hereby authorized and empowered, in its corporate capacity, to borrow any sums of money from any person or persons, corporation, or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any person or party of whom such loan may be obtained, any law on the subject of usury in this Territory or future State, or any State where such transaction may be made, to the contrary notwithstanding; and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other obligations and securities, in amount and kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities which it may incur in the construction, repair, equipment, or operating of said road; and the powers of the said company for the purposes aforesaid, and for all purposes necessary to carry out the object of said company, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said company and upon all other parties to said contracts. Empowered to borrow money.

Company to accept act within ten days of passage.

SEC. 12. If said company shall not, within ten days from the passage of this act, accept the same by resolution, to be duly passed by the board of directors, and a certified copy thereof filed in the office of the secretary of the Territory, then the same shall be null and void,* and if accepted, then the said company shall, within fifteen months from the first day of September next, grade and complete, ready for the iron, all that portion of said railroad from Stillwater, by way of St. Paul, to St. Anthony, and within nine months thereafter put in actual operation said road from Stillwater, by way of St. Paul, to St. Anthony, and thereafter the work on said line of railroad and branch shall be completed and put in operation at the rate of not less than thirty miles in each year, and within ten years from the 3d day of March, 1857, the whole of said railroad and branch mentioned in said act of Congress, and hereby authorized to be constructed by said company, shall be completed and in actual use.

Time when whole of road is to be finished.

Appropriation of private property.

SEC. 13. Whenever the line of said railroad and branches, or any part thereof, shall be located, and its route determined, the said company may apply to the supreme, district, or county court, in session, or any judge thereof in vacation, for the appointment of three commissioners to make an appraisal and award of the value of any and all lands, which are the private property of any person, on the line of said railroad and branches, or any division or part thereof, which shall be designated in such application, and which the said company shall have entered upon, possessed, occupied, or used, or which it may thereafter enter upon, take, possess, occupy, or use for any of the purposes for which, by this act, the said company is authorized to enter upon, take, possess, occupy, or use lands. The said company shall give notice of its intention to apply for the appointment of such commissioners, by publishing the same, at least ten days before the time for hearing such application, in at least one newspaper published in the county in which such lands lie; but in case no newspaper be published in such county, then in a newspaper published in the city of St. Paul; and upon an affidavit of the publication of the same, the court or judge to whom the application shall be made shall appoint three commissioners, who shall have cognizance of all cases arising on the line or route of said railroad and branches, or any division or part thereof, which shall be designated by said company in such application, and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable to such owner, guardian, or husband, and at least five days' personal notice to such owner, if resident in the county; and whenever it shall appear to said company or its officers that the title of such land is in dispute, or that several parties claim interest therein, by tax sales, tax-titles, incumbrances, liens, or equitable claims, the said commissioners shall, upon request of said company, or its officers, give notice to all persons claiming any inter-

Appointment of commissioners.

Authority of commissioners.

Proceedings of commissioners.

Notice to owners or claimants.

* Accepted May 27, 1857.

est in such land, whether as owners, incumbrancers, or otherwise; and when the person to be notified has no known residence in this Territory or State within the knowledge of such commissioners, the notice may be by publication in a newspaper for such length of time as the commissioners shall deem reasonable; and after making such exam-
511 ination, the said commissioners, or a majority of them, shall in each case separately make an appraisement and award of the value of the lands so entered upon, taken, possessed, occupied, or used by said company for any of the purposes aforesaid, at the time when the same was so entered upon and taken, and shall deliver one copy of their award in each case to said company, and shall file another in the office of the clerk of the circuit court or district court of the county in which said lands shall lie, or of the county to which such county shall be attached for judicial purposes, with the costs of the award taxed upon each of said copies; and if neither party shall appeal from said award in the manner hereinafter provided, the said circuit or district court, on motion of the party in whose favor any award shall be made for such value as aforesaid, unless such award shall have previously been paid, shall enter up judgment in conformity with such award; and in case either of said commissioners shall die, resign, or decline to act, the supreme, district, or county court or judge shall appoint another commissioner in his stead, and the said company, or any party receiving notice from the said commissioners as aforesaid, may, within thirty days after such award shall have been filed with the clerk as aforesaid, appeal from the same to the circuit or district court for the county in which such award shall be filed, by filing with the clerk of said court a written notice of such appeal; and upon receiving such notice the said clerk shall enter the appeal, as a case upon the docket of said court, setting down the owner or owners and person or persons claiming any interest in said land, embracing all persons so having received such notice from said commissioners, as plaintiff, and the said company as defendants, and the said court shall proceed to hear and determine such case in the same manner that other cases are heard and determined in such court, and all issues of fact arising therein shall be tried by a jury, unless a jury be expressly waived by both parties; but the appellant shall not be entitled to have the case tried at any term of said court unless he shall have given notice to the appellee or his attorney, at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee has no known residence in this Territory or State, or attorney of record residing therein, no such notice need be given; but in all cases the appellee may waive such notice, in which case the same rule for trial shall be applicable to it as to other cases
512 in said court. After the hearing of such case, the jury, or, if a jury be waived, the court shall assess the value of the lands so entered upon, taken, possessed, occupied, and used, by said company, at the time when the same was

Appraisement and award of value.

Copy to be filed.

Judgment on award.

Appeal.

Proceedings on appeal.

entered upon and taken; and after such assessment, the court shall proceed to render judgment against said company for the amount of said assessment in favor of the plaintiff or plaintiffs in such case; and if the amount so assessed in favor of the said plaintiff or plaintiffs shall exceed the amount awarded by said commissioners, with interest at the rate of twelve per cent. per annum from the time of such award and the time of such assessment by the jury or court, then judgment shall be rendered against said company for costs, and when the appeal shall be taken by the claimant, and it shall not exceed such amount and interest as aforesaid, then judgment shall be rendered in favor of said company for costs, and against the said plaintiff or plaintiffs, and execution may issue accordingly. Either party shall be entitled to a change of venue for the trial of such cause on affidavit filed, stating the belief of the affiant that a fair trial cannot otherwise be had. The change of venue shall be the nearest county where a fair trial can be had. The judgment of the said court may be reviewed on a writ of error, as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, or whenever in case of appeal a final judgment shall be rendered, it shall be the duty of the company, and not before, to pay the party entitled to the same the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax, sale, tax title or equitable claim to or upon the land, or any part thereof, which is the subject-matter of such award or judgment, or when more than one person shall be entitled to or shall set up any claim to the amount of said award or judgment, or any part of it, or when the person entitled to receive the same shall not have any known residence within the Territory or State, the said company may deposit the amount of such award, when there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment with the clerk of the court in which such judgment shall have been rendered, and the money so deposited in either case shall be paid over by order of the court to the person or persons who shall be adjudged by the court to be entitled to receive the same; and whenever the amount of such award or judgment shall have been paid or tendered or deposited as aforesaid, an absolute estate in fee-simple in such lands shall be and become vested in the said company, as against all persons so receiving notice from the said commissioners as aforesaid, and all such persons so having received such notice shall be forever excluded from questioning such title so acquired by the said company, and the said company shall have full power and authority, after entering upon and taking any such lands, to have, hold, possess, occupy, use, and enjoy the same for any of the lawful purposes of the said company, from the time of such entry and taking until the proceedings contemplated by this act shall have been finally determined, and until said company

Costs.

Change of venue.

Writ of error.

Judgment, when to be paid.

May deposit amount, when.

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Estate in fee-simple to vest in company.

Right to undisturbed possession.

shall have refused, after demand made, to pay the value of said land so ascertained as aforesaid; and they shall not during such time, nor until such refusal, be disturbed in such possession or occupancy, use, or enjoyment, by any proceedings, either in law or equity.

Wanton mischief to road, how punished.

SEC. 14. If any person shall willfully or knowingly injure or destroy any part or portion of the railroads so to be constructed, or any works, buildings, or machinery attached to or in use upon the same belonging to said company, or shall willfully and maliciously place any obstruction or thing upon the track of said railroad, such person or persons so offending shall each of them, for every such offence, forfeit and pay to said company three times the amount of damages caused by such offence, which may be recovered in the name of said company, by action of debt in any court having competent jurisdiction, and shall also be subject to indictment, and on conviction of any such offence shall be punished by fine and imprisonment, not exceeding ten years in the State prison, or either, at the discretion of the court; and in case any accident shall occur in consequence of any such obstruction or damages to said road or machinery, whereby the death of any person shall be caused, the person so offending shall, on conviction, be adjudged guilty of murder in the first degree, and punished accordingly, in such manner as shall be prescribed by the statutes for the punishment of murder in the first degree.

Shares of stock liable to execution, &c.

SEC. 15. The property of every person vested in the stock of said company shall be liable to be taken
514 in execution for the payment of his or her debts, in such a manner as is or may be provided by law, but no tax shall ever be levied on the stock-shares of said company, except the yearly payment to be made by said company, as herein provided; and the shares held by any stockholder, when taken in payment of any other debt or liability of such stockholder, shall be subject to all indebtedness and claims of every kind in favor of said company, against the holder of said stock, which indebtedness and claims shall be fully paid before said company shall be required to transfer said stock to any purchaser thereof, and before any such purchaser shall acquire any right or title thereto.

Grant of lands to the company.

SEC. 16. For the purpose of aiding in the construction of the railroads hereby authorized, all the interest and estate, present and prospective, of this Territory, and of the future State which shall succeed it, in or to any or all the lands granted by the Government of the United States to the Territory of Minnesota, for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch, via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, to the point hereinbefore mentioned, agreeably to the terms of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the

Route of the road.

construction of a certain railroad in said State," approved March 3d, 1857, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, are hereby granted to said Minnesota and Pacific Railroad Company, conditioned that said land shall be exclusively applied to the construction of that road for which it was granted; and provided, that the title of said land shall vest in the said Minnesota and Pacific Railroad Company, in the manner following, that is to say: whenever twenty or more continuous miles of said road shall have been located, the governor of the Territory or future State shall certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of said lands shall vest in the said company; and when twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior, whenever any such twenty miles are completed, so as to admit of running regular trains of cars over the same; and the governor shall, in his official capacity, and on behalf of the Territory or State, and under the great seal thereof, execute and deliver to the said Minnesota and Pacific Railroad Company, whenever it shall, by virtue of the provisions of this act, be entitled to any of said lands, a deed in fee-simple of any and all of the lands to which said company shall be entitled.

Title to vest in company, how.

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Governor to execute deed.

Location of routes.

SEC. 17. The location and designation of the route and line of said railroad and branch shall be made by said company, and reported to the governor from time to time, and as fast as the same shall be definitely located and established; and the selection of the lands provided for by the act of Congress aforesaid shall be made, as soon thereafter as practicable, by said company or such agents as it may designate, under the appointment of the governor of the Territory or future State of Minnesota; such selections, as well as the survey of said roads, and the compensation of such agents shall be at the cost and charge of said company, without charges of any kind upon the Territory or future State; and said railroads, so constructed by the application of the proceeds of the lands hereby granted, shall be and remain public highways for the use of the Government of the United States, free from any toll or other charge upon the transportation of troops and military property of the United States; and the United States mail shall be transported over said road and branch, under the direction of the Post-Office Department, at such price as Congress may by law direct; provided, that until such price is fixed by law of Congress the Postmaster-General shall have power to determine the same.

Selection of lands.

Use of roads free to Government.

SEC. 18. In consideration of the grants, privileges, and franchises herein conferred on the said Minnesota and Pacific Railroad Company, the said company shall and

will, on or before the first day of March in each year, pay into the treasury of the Territory or future State, three per centum of the gross earnings of the said railroad, for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatever; and for the purpose of ascertaining the said earnings, an accurate account shall be kept by said company of all receipts and expenditures on account of the operation of said railroads, and abstracts thereof shall be furnished by said company to the treasurer of the Territory or State on or before the first day of February in each year, the truth of which shall be verified by the affidavits of the secretary and treasurer of said company; and for the purpose of ascertaining the truth of said affidavits and the correctness of such abstracts, full power is vested in the governor, or any other person appointed as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of said company, and other persons; and if any person so examined by the governor or other authorized person shall knowingly and willfully swear falsely concerning the matters aforesaid, every such person is hereby declared to have committed perjury; and for securing to the Territory or State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroads of the said company, and upon all other property, estate, and effects of the said company, whether real, personal, or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees, and judgments against the said company. The first payment shall be made on the first day of March next after fifty miles of said railroad shall be completed, and such payment shall be in lieu of all taxes, and in full of all claims of the Territory or State for the grant hereby made; and in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever by the Territory, or State which shall succeed the Territory, or by any county, city, town, village, or other municipal authority in the Territory or State, upon all stock in the said "Minnesota and Pacific Railroad Company," whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal, or mixed, held by said company; and said land granted by said act of Congress hereby authorized to be conveyed to the said Minnesota and Pacific Railroad Company shall be exempt from all taxation till sold and conveyed by said company.

Three per cent. of gross earnings in lieu of taxes.

First payment.

Exemption of all property from taxation.

SEC. 19. The said "Minnesota and Pacific Railroad Company" shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of its railroads may run to or connect with, and to receive and collect such tolls and charges therefor as said company shall from time to time fix and determine; and for that purpose may purchase, build, and own such vessels, boats, and barges, or other water craft, as it may require.

Authority to transport by water.

Company may take and dispose of lands, &c.

SEC. 20. The said Minnesota and Pacific Railroad Company shall be capable in law of taking and holding any lands granted by the Government of the United States or of this Territory, or of the future State, or by other parties, which shall be conveyed to it by this act, or by deed, gift, or purchase, or by operation of law, and may mortgage, pledge, sell, and convey the same, or otherwise dispose of all their right, title, interest, claim, or demand of, in, and to such lands so granted to said company, and in any other estate, real, personal, or mixed, of which said company may be seized, or which it may acquire subsequently thereto, in such manner and on such terms as the directors may think proper.

May execute bonds.

SEC. 21. That said company is hereby authorized and empowered, in its corporate capacity, to make, execute, issue, and deliver its bonds or obligations in any amount which the directors may deem necessary or expedient; provided, that the faith of the Territory or future State of Minnesota shall be in nowise pledged for the redemption of said bonds, and that no banking privileges are hereby granted to said company; and the directors of said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable, the person or persons, trustee or trustees, or corporation to whom they shall be payable, and whether payable to order or to bearer, or how otherwise negotiable; the rate of interest which said bonds shall bear, and the manner and form in which the interest-coupons annexed to them shall be executed; and to secure the payment of all or any of said bonds, the said company is hereby authorized and empowered, in its corporate capacity, to make, execute, and deliver one or more mortgages or deeds of trust upon the whole or any part of its railroad or branches, constructed or authorized to be con-

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structed, and of the estate granted by this act, and any or all other of their estate, real, personal, or mixed, in possession or expectancy; and said company is also hereby empowered and authorized, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample powers to enter into and upon, and to take possession, have, use, and employ, or to sell or dispose of, the whole or any part of said railroad and branches, and all corporate and other franchises, rights, and privileges of said company; and in case of any such sale, to grant and convey to the party or parties acquiring title under any such sale, and their associates, successors, and assigns, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by such mortgage or deed of trust enumerated and conveyed, which belonged to and were enjoyed by the said company, as fully and absolutely in every respect as the said company, its stockholders, officers, and agents, might or could have done if such sale or foreclosure had not taken place.

May execute mortgages and deeds of trust.

May authorize trustees to sell.

And the directors of said company are hereby authorized and empowered to prescribe, by resolution to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized to provide for the periodical payment to such trustee or receiver as they shall appoint a certain sum to create a sinking-fund, with which to pay off and discharge, at or before maturity, all or any of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot, or any other suitable manner, the bond or bonds to the payment of which such sinking-fund, or any part thereof, shall be applied; and the said company is hereby fully authorized and empowered, by its agents or brokers, or otherwise, at any place, to sell, loan, pledge, hypothecate, or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par or at any price less than par, and for such sum or sums, and on such terms, as to the said company, or its agents or brokers, shall appear most for the interest of said company. And any such mortgage or deed of trust, and every discharge or satisfaction thereof, may be recorded in the office of the secretary of the Territory or future State of Minnesota, in a proper book kept for that purpose; and the certificate of such recording, endorsed on such mortgage or deed of trust, shall have the same effect as if recorded in the several counties through which such road may run, or in which such land may be, and such record in the office of the secretary shall be sufficient notice to all persons.

Authorized to fix terms of trust and deed.

A sinking-fund.

Where trust-deed to be recorded.

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SEC. 22. All the property which the said Minnesota and Pacific Railroad company is authorized to take, possess, hold, use, or enjoy, by making payment therefor as in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so take, possess, hold, or use the same.

Property taken for public use.

SEC. 23. Every conductor, baggage-master, engineer, brakeman, or other servant of such corporation, employed in a passenger-train or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, initial letters, or style of the corporation. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office, and no other of said officers or servants without such badge shall have any authority to meddle or interfere with any passenger, his baggage or property.

Badges of employees.

SEC. 24. A bell of at least thirty pounds, weight, or a steam-whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where said road shall cross any other road, and be kept ringing or whistling at intervals until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the Territory or future State of Minnesota, and

Bells and whistles.

Railroad-crossing signs.

to be liable for all damages by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained, across each public road or street where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by travellers, and on each side of such board shall be painted in capital letters, of at least the size of nine inches each, the words "Railroad crossing; look out for the cars." But this provision shall not apply to streets of cities or villages, unless the corporation be required to put up such boards by the officers having charge of such streets.

Fences.

Said company shall construct and maintain a good substantial board or rail fence, four and one-half feet high, along said railroad, in the line of the lands by this act granted to them, and shall construct and maintain cattle-guards, wherever the same may be necessary, sufficient to keep cattle, sheep, horses, and hogs from off the track of said railroad, whenever required by the board of county commissioners of the counties respectively through which said road shall pass, and shall be liable for all damages sustained by any person by reason of neglect to keep and maintain such fence or cattle-guard in good repair.

Power to construct road from Winona to St. Paul.

SEC. 25. Said company is hereby authorized, and shall have full power, to locate, construct, and operate a railroad, with one or more tracks, from Winona, up the valley of the Mississippi River to Saint Paul, and to extend its line of railroad from its terminus, at a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, to any point on the Missouri River north of the forty-fifth parallel of north latitude, and to increase its capital stock equal to the full cost of said railroad and extension.

Telegraph.

SEC. 26. Said company shall also have power and authority to construct and operate a line of magnetic telegraph along any or all of its railroads or branches in this Territory or future State of Minnesota.

Consolidation with foreign companies.

SEC. 27. The Minnesota and Pacific Railroad Company shall not at any time consolidate with any railroad company owned or operated outside the Territory or State of Minnesota without the authority of the legislature of said Territory or State. All the railroads in this Territory shall be of uniform *guage* or width of tracks, which shall be, and is hereby, established at four feet and eight and one-half inches.

Uniform *guage*.

Public act.

SEC. 28. This act is hereby declared to be a public act, and shall be favorably construed to effect the purposes thereby intended, and copies thereof printed by authority of the Territory or State of Minnesota shall be received as evidence thereof in all cases.

When act to take effect.

SEC. 29. This chapter one of this act shall take effect and be in force from and after the passage of this act.

521 CHAPTER II.

SECTION 1. The Transit Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate the Transit Railroad, with one or more tracks or lines from the city of Winona, on the most direct and

feasible route, by way of St. Peter, to the Big Sioux River, south of forty-fifth parallel of north latitude; and shall have, possess, exercise, and enjoy by the same rights, privileges, functions, franchises, authority, and immunities, (with reference to the said route, or any railroad to be built thereon,) and there is hereby conferred upon the Transit Railroad Company all the power and authority contained in the charter of said company, passed by the legislative assembly of the Territory of Minnesota, entitled "An act to incorporate the Transit Railroad Company," approved March 3, 1855, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built; and the whole of the railroad, or said road hereby authorized to be constructed, shall be constructed by said Transit Railroad Company within ten years from the third day of March, A. D. 1857. The Transit Railroad Company shall never set up the defense of usury to any contract in any court whatsoever.

SEC. 2. For the purpose of aiding in the construction of the railroad, which by this act the Transit Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this Territory and future State, in or to any and all the lands granted by the Government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Winona,
522 via St. Peter, to the Big Sioux River south of forty-fifth parallel of north latitude, by virtue of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections in the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3, 1857, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred upon said road by the said act of Congress, are hereby granted to and vested in the said Transit Railroad Company; provided that the said lands shall be exclusively applied to, and used by, said Transit Railroad Company in the construction of a railroad from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude, and shall be disposed of only in the manner prescribed in said act of Congress approved March 3, 1857, and shall be applied to no other purpose whatsoever.

SEC. 3. The location and designation and any change or alteration of the route and line of said railroad shall be made by the Transit Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the Territory or future State of Minnesota. The selecting of lands provided for in the act of Congress hereinbefore mentioned, and herein vested in said Transit Railroad Company, shall be made by such agent or agents as shall be appointed by the governor of this Territory or future State of Minnesota, who is hereby required to appoint the same upon the request of said company. Compensation of such agents shall be at the cost and charge of said company, without charge of any kind upon the treasury of this Territory or future State of Minnesota. Said railroad, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain a public highway for the use of the Government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said railroad under the direction of the Post-Office Department, as provided in said act of Congress.

SEC. 4. The said lands so granted shall be, and are, exempted from all taxation until the same shall have been sold and conveyed by said company. In consideration of the grant of land and other fran-
523 chises and privileges hereby confirmed in and conferred on the Transit Railroad Company, the said company shall pay into the treasury of the Territory or State of Minnesota three per cent. upon all the gross earnings of said road, the amount of the gross earnings to be ascertained by the verified statement of the president and treasurer of said company as hereinbefore provided for; and the said three per cent. shall be so paid into the treasury of the Territory or future State of Minnesota within sixty days after any portion of the said road shall be operated, and annually thereafter; and the same, when paid, shall be in lieu of all taxes whatever.

SEC. 5. The said Transit Railroad Company shall have full power and authority to transport persons and property in boats, vessels, and barges, or other water craft, on any navigable stream or water which their said road may run to or connect with, and to collect and receive reasonable compensation for the same; and for that purpose may purchase or hold and own such vessels, boats, or other craft as may be required for the purpose aforesaid.

SEC. 6. The said Transit Railroad Company shall be capable in law of taking and holding any lands granted by the Government of the United States, or of this Territory or future State of Minnesota, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed in fee-simple, or any lesser estate, or by operation of law. And they may also borrow money, issue bonds or other evidences of debt to secure the same, and may also mortgage, or pledge, or otherwise dispose of all the right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 7. Whenever any twenty continuous miles of said railroad shall be completed, it shall be the duty of the governor of this Territory or future State to certify that fact to the Secretary of the Interior, and so from time to time, as often as twenty more continuous miles of said road shall be completed.

SEC. 8. The Root River Valley and Southern Minnesota Railroad Company shall have at all times the right to send passengers and
524 freight over the Transit Railroad at as low rates and charges per mile as the said Transit Railroad Company may charge over any portion of their said road.

SEC. 9. Said Transit Railroad Company shall have full power and authority to extend its line of railroad from its terminus on the Big Sioux River to any point on the Missouri south of the forty-fifth parallel of north latitude.

SEC. 10. This chapter two of this act shall take effect and be in force from and after the passage of this act.

525 CHAPTER III.

* SECTION 1. The Root River Valley and Southern Minnesota Railroad Company are hereby authorized and empowered to survey, locate, construct and complete, and perpetually to have, use, maintain, and operate a railroad, with one or more tracks or lines, from La Crescent, via Target Lake, up the valley of Root River, to a point of junction at Rochester, (with a railroad from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude,) east of range seventeen, in the Territory of Minnesota; provided the last-mentioned railroad is operated and constructed by way of Rochester, in accordance with the act of incorporation of said Root River Valley and Southern Minnesota Railroad Company, approved March 2d, 1855, and all subsequent amendments thereto. Powers.

SEC. 2. The said Root River Valley and Southern Minnesota Railroad Company are hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate a railroad, with one or more tracks or lines, from St. Paul and St. Anthony, via Minneapolis, to a point of junction at Shakopee City, in the county of Scott, and thence, via Belle Plaine, Clarksville, Le Sueur, Traverse de Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory of Minnesota, in the direction of the mouth of the Big Sioux River, Have road.

and for these purposes shall have, possess, exercise,
526 and enjoy the same rights, privileges, and immunities with reference to the said routes, or any route of railroad in this act provided for, or any railroad to be built thereon, as it now possesses and enjoys with reference to the roads described in the act of incorporation of said company, and the amendment thereto.

SEC. 3. All the lands, interest, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress, approved March 3, 1857, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said roads or lines above mentioned, are hereby disposed of and conferred to and upon the said Root River Valley and Southern Minnesota Railroad Company, subject to the provisions hereinafter set forth and the provisions of the act of Congress aforesaid. Grant of lands.

SEC. 4. The whole of said railroads herein authorized and required to be constructed shall be completed by the said Extension and confirmation of powers of Minneapolis and Cedar Valley Railroad Company.

* Chapter one of this act refers to the Minnesota and Pacific Railroad Company, and will be found on page 119.

Chapter two refers to the Transit Railroad Company, and will be found on page 259.

Chapter three of this act relates to the Root River Valley and Southern Minnesota Railroad Company, and also to the Minneapolis and Cedar Valley Railroad Company.—See page 341.

Root River Valley and Southern Minnesota Railroad Company within ten years from the 3d day of March, A. D. 1857, and that portion of the road aforesaid from St. Paul to St. Peter, and from St. Anthony, via Minneapolis, to the point of junction at Shakopee City, shall be completed within four years from the first day of January, A. D. 1858; provided, that that portion of the road from St. Anthony, via Minneapolis, to the point of junction shall be commenced and built as soon as that from St. Paul; and the said company shall never set up the defence of usury to any contract whatever.

Branch road to Brownsville.

SEC. 5. The said Root River Valley and Southern Minnesota Railroad Company are hereby authorized and required to construct a railroad, with one or more tracks, from a point of junction with the first mentioned road, at or near Hokah, to the village of Brownsville, in the county of Houston, which branch road shall be completed within three years from the approval of this act; provided, that nothing herein contained shall conflict with the said act of Congress, with the privilege of extending the said branch to the south line of the Territory of Minnesota; and the said Root River Valley and Southern Minnesota Railroad Company is
527 hereby authorized and empowered to survey, locate, construct, and complete, and perpetually to have, use, maintain, and operate a railroad, with one or more tracks, from the western terminus of the railroad herein authorized to be constructed by the said company, (from St. Paul to the southern boundary of the Territory of Minnesota, in the direction of the mouth of the Big Sioux River, in a westerly direction to the Missouri River,) and for these purposes the said company shall have, possess, exercise, and enjoy the same rights, privileges, franchises, authority, and immunities with reference to the said routes so extended, or any railroads to be constructed thereon, as are granted to said company by their act of incorporation.

528 SEC. 6. The Minneapolis and Cedar Valley Railroad Company is hereby authorized to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate, with one or more tracks, a railroad from Minneapolis, in the direction of Faribault, to a point of junction (with the aforesaid railroad from St. Paul to the southern boundary of the Territory of Minnesota) in the direction of the mouth of the Big Sioux River, said point of junction to be in the county of Dakota, from one to six miles from Mendota, in a southerly direction, thence from said junction or crossing of the said road from St. Paul, via Faribault, to the south line of the Territory of Minnesota, west of range sixteen, and for that purpose shall have, possess, and enjoy and exercise the same rights privileges, franchises, and immunities, with reference to the said route or any railroad to be constructed thereon, as it possesses or enjoys in reference to the road described in the act of incorporation of said company, and all the lands, rights, powers, privileges, and interests
529 granted to and conferred upon the Territory of Minnesota in and by virtue of the said act of Congress, approved March 3, 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid the construction of certain railroads in said Territory, and granting public lands to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the

said road or route, shall be, and are hereby, disposed of, granted, and conferred to and upon the said Minneapolis and Cedar Valley Railroad Company, subject to the terms, conditions, and provisions hereinafter set forth, and of the said act of Congress; and the whole of said railroad hereby authorized to be constructed by the said Minneapolis and Cedar Valley Railroad Company shall be completed within ten years from the 3d day of March, A. D. 1857; and the said company shall never set up the defence of usury to any contract in any court whatever.

SEC. 7. For the purpose of aiding in the construction of the railroads which by this act the several railroad companies mentioned in this act are authorized to construct, all the interest and estate, present and prospective, of the said Territory and future State, in or to any and all the lands granted by the Government of the United States to the Territory of Minnesota, for the purpose of aiding in the construction of the roads herein set forth, by virtue of the act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3d, A. D. 1857, together with all and singular the rights, privileges, and immunities, conferred or intended to be conferred upon said railroads by the said act of Congress, are hereby granted to and vested in said railroad companies respectively; provided that the said lands shall be exclusively applied to and used by said railroad companies respectively in the construction of the aforesaid railroads, and shall be disposed of only in the manner prescribed in said act of Congress.

SEC. 8. The location and designation and any change or alteration of the route and line of said railroad shall be made by the aforesaid railroad companies respectively; and the same shall be from time to time, and as fast as practicable, reported to the governor of the Territory or future
530 State of Minnesota. The selecting of lands provided for in the act of Congress hereinbefore mentioned, and herein vested in said companies, shall be made by such agent or agents as shall be appointed by the governor of this Territory or future State of Minnesota, who is hereby required to appoint the same. Compensation of such agents shall be at the cost and charge of said companies, without charge of any kind upon the treasury of the Territory or future State of Minnesota. Said railroads which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain a public highway for the use of the Government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said railroads, under the direction of the Post-Office Department, as provided in said act of Congress.

SEC. 9. The said lands so granted shall be and are exempt from all taxation until the same shall have been sold and conveyed by said companies, but so soon as the said companies shall have respectively constructed, equipped, and put in operation fifty miles of railroad for the transportation of freight and passengers, the said companies shall severally pay into the treasury of the Territory or State of Minnesota, in lieu of all taxes whatsoever upon the property of said companies respectively, the sum of three per cent. annually on the gross earnings of each of the said roads, said gross earnings to be ascertained by a statement, under the oaths of the president and treasurer of each of the said roads, which statement shall be filed on or before the first day of January in each year, in the office of the governor of the Territory or future

State of Minnesota, said payments to be made annually, within sixty days after the filing of the statements aforesaid, and the governor shall have the right to appoint a commissioner to examine the books and accounts of said company at any time.

SEC. 10. The said railroad companies shall have full power and authority to transport persons and property in boats, vessels, barges, and other water crafts, on any navigable river, stream or water, which their said road may run to or connect with, and to collect and receive reasonable compensation for the same, and for that purpose may purchase or hold and own such vessels, boats, or other crafts as may be required for the purpose aforesaid; provided, however, the provis-
531 ions of this section shall not interfere with or apply to the ferry rights, privileges, and franchises heretofore granted by the legislature of this Territory.

SEC. 11. The said railroad companies shall be capable in law of taking and holding any lands granted by the Government of the United States, or of this Territory or future State of Minnesota, to aid in the construction of railroads, which shall be conveyed to these companies by this act or by deed in fee-simple or any lesser estate, or by operation of law. And they may also borrow money, issue bonds or other evidences of debt to secure the same, and may also mortgage or pledge or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands granted to said companies, or either of them, by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 12. When any continuous twenty miles of either of said railroads shall be completed, it shall be the duty of the governor of this Territory, or future State, to certify that fact to the Secretary of the Interior, and so from time to time, as often as twenty more continuous miles of said railroads are completed, and said lands shall become the property of the respective companies herein mentioned in accordance with the provisions of the act of Congress making the grant of lands to the Territory of Minnesota, approved March 3d, 1857, heretofore referred to in this act.

SEC. 13. The Minneapolis and Cedar Valley Railroad Company shall at all times have the right to use the road, track, switches, depots, and grounds of the said Root River Valley and Southern Minnesota Railroad Company from the junction of the aforesaid railroads to the city of St. Paul, with its engines, tenders, cars, and all other carriages necessary or convenient for the transportation of freight and passengers, and by its servants and officers to fully and freely enter upon, occupy, and use the same in the transaction of its business to and from the said city of St. Paul, on such terms and conditions as shall be agreed upon by said companies, and in case the said companies shall not be able to agree in reference to said terms, either party may apply to the governor of the Territory or State, on ten days' notice, for the appointment of three disinterested persons, one of whom shall be an engineer, to
532 decide upon the terms and conditions of such use, and the compensation to be paid for the use of said roads, tracks, and depots, as herein provided, and the award of the persons so appointed as aforesaid shall be final and conclusive.

And the said Minneapolis and Cedar Valley Railroad Company are hereby authorized at any time to build and construct from the said junction to the city of St. Paul, on the line or route, and on the lands

of the said Root River Valley and Southern Minnesota Railroad Company, or any portion of the same, one or more separate tracks, with the necessary side-tracks, turn-outs, switches, and other conveniences, and also to locate, build, and construct from any other point on their said road a like road to and from St. Paul, and from any point on said road a like road to Hastings, with all necessary side-track, turn-outs, switches, depots, and other conveniences for the transportation of freight and passengers, and are hereby authorized to take, acquire, and hold, at St. Paul and elsewhere, all necessary depot-grounds and other real estate, in the same manner as provided in their act of incorporation. And it is also hereby further provided that all and singular the rights and privileges hereinbefore granted to the Minneapolis and Cedar Valley Railroad Company, into and over the track, depots, and lands of the Root River Valley and Southern Minnesota Railroad Company, and also to construct another track on the lands of said company, be, and the same are hereby, granted and conferred to and upon the said Root River Valley and Southern Minnesota Railroad Company over the lands of the Minneapolis and Cedar Valley Railroad Company, in and to and over the line, route, and lands of the Minneapolis and Cedar Valley Railroad Company, from said junction, or any other point on their said line, to St. Anthony, upon the same terms and conditions, in all respects, as is hereby granted and provided for said Minneapolis and Cedar Valley Railroad Company, in, to, and over the lines of road, track, and lands of the said Root River Valley and Southern Minnesota Railroad Company.

SEC. 14. If it shall be found, after the selection of lands is made, that there is a greater quantity of land in proportion to distance included in the grant to the Root River Valley and Southern Minnesota Railroad, on the line of road to be constructed by said company from St. Paul and from St. Anthony, by way of Minneapolis, to the south-
533 ern boundary of the Territory, as herein described, than on the line of road to be constructed by the Minneapolis and Cedar Valley Railroad Company, in proportion to the number of miles of route to be constructed by said company, the governor of the Territory or State, at the request of the company upon whose line the deficiency may exist, shall appoint an agent to select and set apart from the lands on the line of the road having such excess of quantity a sufficient amount of lands on such line, of average quality, location, and value, to equalize the quantity of lands to each company, it being intended that each company are to equally share the lands granted on both lines, in proportion to the distance of roads to be constructed by each, and the lands so selected and set apart shall vest in and become the property of said company so entitled to receive them on the report of the commissioners, as aforesaid, such selection and report being confirmed by the governor; provided, that nothing herein contained shall be taken or construed to authorize the appropriation of any of the lands granted to the road from St. Paul and from St. Anthony, via Minneapolis, to the Iowa line in the direction of the mouth of the Big Sioux River, or the branch thereof, via Faribault, to the Iowa State line, to the construction of the road from La Crescent to the junction with the road from Winona, via St. Peter, to the Big Sioux River, south of the forty-fifth parallel of north latitude; and provided further, that nothing herein contained shall conflict with the said act of Congress.

SEC. 15. The Root River Valley and Southern Minnesota Railroad Company are hereby authorized and required to elect six additional directors (five of whom shall be from along the line of the road mentioned

in this section) to the number already authorized by their act of incorporation. And the persons so elected shall remain in office until the next annual election, and at said annual election, and at all future elections by the stockholders of said company, one-third of said board of directors shall be elected from citizens residing upon the roads leading from St. Paul and from St. Anthony, via Minneapolis, to the Iowa line in the direction of the mouth of the Big Sioux River.

SEC. 16. The Root River Valley and Southern Minnesota Railroad Company, and the Minneapolis and Cedar Valley Railroad Company, shall, within forty days after the passage of this act, cause their books to be opened and kept open for ten days, or until one million of
534 dollars to the capital stock in each of said companies shall have been subscribed, subject to the provisions of their charter and by-laws respectively, said books to be opened at St. Paul and Minneapolis, Shakopee, and St. Peter, notice of which shall be published in some newspaper printed at each of the above-named places at least two weeks before said books are so to be opened. The said Minneapolis and Cedar Valley Railroad Company and the Root River Valley and Southern Minnesota Railroad Company shall have full power and authority to become united and consolidated in a single corporation with any other railroad company in this Territory, on such terms and conditions as the board of directors of said respective companies may agree to and prescribe, and such consolidation may be authorized by the said board of directors at any regular meeting of said board called for that purpose. When articles of consolidation shall be duly entered into and agreed upon by the directors of the respective companies interested, they shall be submitted to the stockholders of the several companies for their approval, and if the stockholders holding a majority of the capital stock in each of the respective companies so interested shall approve the same, then they shall be subscribed by the president and secretary of each of said companies, and a duplicate thereof shall be filed in the office of the secretary of the said Territory or State, and all the rights, interests, powers, privileges, franchises, and property conferred upon such companies respectively by their act of incorporation or by this act, or held and enjoyed by said companies under their respective charters, shall vest in, and be held, used, exercised, and enjoyed by, the said consolidated company, under the corporate name chosen and designated in the said articles of agreement and consolidation, as fully, amply, and effectually, to all intents and purposes whatsoever, as if the same had been directly granted to or acquired by said consolidated company. The immediate government and direction of said consolidated company shall be vested in such number of directors as may be fixed and agreed upon in the articles of consolidation.

SEC. 17. The said companies shall respectively, within thirty days after the passage of this act, accept the same, and the acceptance shall be by a resolution adopted by the board of directors, a copy of
535 which, duly certified by the secretary of the company, shall be deposited in the office of the secretary of said Territory within the time aforesaid.

SEC. 18. This act shall take effect and be in force from and after its passage.

SEC. 19. All the different companies mentioned in this act shall construct and maintain a good and substantial board and rail fence, four and one-half feet high, on both sides of their respective roads, and shall construct and maintain cattle-guards whenever the same may be necessary, sufficient to keep cattle, sheep, horses, and hogs from off the track of

said road, and shall be liable for all damages sustained by any person by reason of any neglect to keep and maintain such fence and cattle-guards in good repair. Said company shall make and keep in repair such farm-crossing as shall be necessary to accommodate the several land owners through which the said roads pass.

SEC. 20. The lands authorized to be taken by the said several companies for right of way and depot-grounds shall be deemed to be taken for public use.

Approved May 22, 1857.

536 A bill to change the name of the Root River Valley and Southern Minnesota Railroad Company.

Be it enacted by the legislative assembly of the Territory of Minnesota:

SECTION 1. The corporate name of the Root River Valley and Southern Minnesota Railroad Company shall hereafter be the Southern Minnesota Railroad Company, and by that name shall be known and called in all its corporate acts and dealings.

SEC. 2. That sec. 2 of an act to incorporate the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, 1855, be amended by striking out the words "Eagle Bluffs, in Winona County," and insert in lieu thereof the words "La Crescent, in Houston County."

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved May 23, 1857.

537 *Amendment to section ten, article nine, of the constitution.* Adopted April 51 1858.

SEC. 10. The credit of this State shall never be given or loaned in aid of any individual, association or corporation, except that for the purpose of expediting the construction of the lines of railroads, in aid of which the Congress of the United States has granted lands to the Territory of Minnesota, the governor shall cause to be issued and delivered to each of the companies in which said grants are vested by the legislative assembly of Minnesota, the special bonds of the State, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, as a loan of public credit, to an amount not exceeding twelve hundred and fifty thousand dollars, or an aggregate amount to all of said companies not exceeding five millions of dollars, in manner following, to wit: Loan of State credit for railroad purposes.

Whenever either of the said companies shall produce to the governor satisfactory evidence, verified by the affidavits of the chief engineer, treasurer, and two directors of said company, that any ten miles of the road of said company has been actually constructed and completed, ready for placing the superstructure thereon, the governor shall cause to be issued and delivered to such company, bonds to the amount of one hundred thousand dollars; and whenever thereafter, and as often as either of said companies shall produce to the governor, like evidence of a further construction of ten miles of its road, as aforesaid, then the governor shall cause to be issued to such company further like bonds Manner of issuing bonds.

to the amount of one hundred thousand dollars for each and every ten miles of road thus constructed; and whenever such company shall furnish like evidence that any ten miles of its road is actually completed and cars running thereon, the governor shall cause to be issued to such company like bonds to the amount of one hundred thousand dollars; and whenever thereafter, and as often as either of said companies shall produce to the governor like evidence that any further ten miles of said road is in operation as aforesaid, the governor shall cause to be issued to such company further like bonds to the amount of one hundred thousand dollars until the full amount of the bonds hereby authorized shall be issued; provided, that two-fifths, and no more, of all bonds issued to the Southern Minnesota Railroad Company shall be expended in the construction and equipment of the line of road from La Crescent to the point of junction with the Transit Road, as provided by law. And further provided, that the Minneapolis and Cedar Valley Railroad Company shall commence the construction of their road at Faribault and Minneapolis, and shall grade an equal number of miles from each of said places.

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Special provisions.

Responsibility of State.

The said bonds thus issued shall be denominated "Minnesota State railroad bonds," and the faith and credit of this State are hereby pledged for the payment of the interest and the redemption of the principal thereof. They shall be signed by the governor, countersigned and registered by the treasurer, sealed with the seal of the State, of denominations not exceeding one thousand dollars, payable to the order of the company to whom issued, transferable by the endorsement of the president of said company, and redeemable at any time after ten and before the expiration of twenty-five years from the date thereof. Within thirty days after the governor shall proclaim that the people have voted for a loan of State credit to railroads, any of said companies proposing to avail themselves of the loan herein provided for, and to accept the conditions of the same, shall notify the governor thereof, and shall, within sixty days, commence the construction of their roads, and shall, within two years thereafter, construct, ready for the superstructure, at least fifty (50) miles of their road. Each company shall make provision for the punctual payment and redemption of all bonds issued and delivered as aforesaid, to said company, and for the punctual payment of the interest which shall accrue thereon, in such manner as to exonerate the treasury of this State from any advances of money for that purpose; and as security therefor, the governor shall demand and receive from each of said companies, before any of said bonds are issued, an instrument pledging the net profits of its road for the payment of said interest, and a conveyance to the State of the first two hundred and forty sections of land, free from prior incumbrances, which such company is or may be authorized to sell in trust for the better security of the treasury of the State from loss on said bonds, which said deed of trust shall authorize the governor and secretary of State to make conveyances of title to all or any of such lands, to purchasers agreeing with

Conditions of loan.

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the respective railroad companies therefor; provided, that before releasing the interest of the State to such lands, such sale shall be approved by the governor, but the proceeds of all such sales shall be applied to the payment of interest accruing upon the bonds in case of default of the payment of the same, and as a sinking-fund to meet any future default in the payment of interest and the principal thereof when due; and as further security, an amount of first-mortgage bonds on the roads, lands, and franchises of the respective companies, corresponding to the State bonds issued, shall be transferred to the treasurer of the State at the time of the issue of State bonds; and in case either of said companies shall make default in payment of either the interest or principal of the bonds issued to said companies by the governor, no more State bonds shall thereafter be issued to said company, and the governor shall proceed, in such manner as may be prescribed by law, to sell the bonds of the defaulting company or companies, or the lands held in trust as above, or may require a foreclosure of the mortgage executed to secure the same; provided, that if any company so in default, before the day of sale, shall pay all interest and principal then due, and all expenses incurred by the State, no sale shall take place, and the right of said company shall not be impaired to a further loan of State credit; provided, if any of said companies shall at any time offer to pay the principal, together with the interest that may then be due upon any of the Minnesota State railroad bonds which may have been issued under the provisions of this section, then the treasurer of State shall receive the same; and the liabilities of said company or companies, in respect to said bonds, shall cease upon such payment into the State treasury of principal, together with the interest as aforesaid; provided further, that in consideration of the loan of State credit herein provided, that the company or companies which may accept the bonds of the State, in the manner herein specified, shall, as a condition thereof, each complete not less than fifty miles of its road on or before the expiration of the year 1861, and not less than one hundred miles before the year 1864, and complete four-fifths of the entire length of its road before the year 1866; and any failure on the part of any such company to complete the number of miles of its road or roads, in the manner and within the several times herein prescribed, shall forfeit to the State all the right, title, and interest, of any kind whatsoever, in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them constructed, and a fee-simple to which has not accrued to either of said companies, by reason of such construction, which was granted to the company or companies, thus failing to comply with the provisions hereof, by act of the legislature of the Territory of Minnesota, vesting said land in said companies respectively.*

Security for loan.

Further conditions of loan.

Failure on conditions.

* Constitutional convention met August 29, 1857. Constitution ratified and adopted October 13, 1857. State admitted by Congress May 11, 1858. Amendment adopted April 15, 1858.

Concurrent resolution of both houses of the legislature of the State of Minnesota, proposing amendments to the constitution of the State.

Resolved by the House of Representatives of the State of Minnesota, (the Senate concurring:)

That there be, and hereby are, proposed for the approval or rejection of the people the following amendments to the constitution of the State, viz:

That section two (2) of article nine (9) of the constitution be amended so as to read as follows:

No tax to be levied to pay interest or principal on railroad bonds without vote of people.

SECTION 2. The legislature shall provide for an annual tax sufficient to defray the estimated ordinary expenses of the State for each year, and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. But no law levying a tax, or making other provisions for the payment of interest or principal of the bonds denominated "Minnesota State railroad bonds," shall take effect or be in force until such law shall have been submitted to a vote of the people of the State, and adopted by a majority of the electors of the State voting upon the same.

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That section ten (10) of article nine (9) of the constitution be amended so as to read as follows:

Credit of State never to be loaned or more bonds issued.

SEC. 10. The credit of the State shall never be given or loaned in aid of any individual, association, or corporation; nor shall there be any further issue of bonds denominated "Minnesota State railroad bonds," under what purports to be an amendment to section ten (10) of article nine (9) of the constitution, adopted April fifteenth, eighteen hundred and fifty-eight, which is hereby expunged from the constitution, saving, excepting, and reserving to the State, nevertheless, all rights, remedies, and forfeitures accruing under said amendment.*

Approved March tenth, one thousand eight hundred and sixty.

August 12, 1868.

542 *An act concerning land-grant railroads.*

Be enacted by the legislature of the State of Minnesota:

Land-grant railroad companies to provide for principal and interest on State loans.

SECTION 1. Each and every railroad company entitled to and accepting the loan of State credit authorized by section X of article 9 of the constitution shall make due provision for the punctual payment of the interest and the final redemption of the Minnesota railroad bonds issued to such company by the State, and to this end every such this State on the roads, lands, and franchises of any such

* The above amendments adopted by the following vote, on November 6, 1860:
Amendment to article 9, sec. 2—yes, 18,648; no, 743.
Amendment to article 9, sec. 10—yes, 19,308; no, 710.

railroad company shall provide and arrange that semi-annual payments of interest and final payments of the principal of the first-mortgage bonds of any such railroad company which may be or shall have been transferred to company, corresponding to the State bonds to such company issued, shall mature and be payable at least sixty days before the maturity of the principal or interest of the Minnesota State railroad bonds issued and delivered, or to be issued and delivered to such company; and the interest and principal of said railroad bonds which may have been transferred to the State shall be paid at the maturity thereof to the treasurer of the State, together with such amount as may be necessary to pay all exchanges or expenses in payment of the ensuing installments or interest or principal of the Minnesota State railroad-bonds, issued for the benefit or use of such railroad company. And all such railroad companies claiming or receiving State aid, shall further make due provision that all necessary expenses or charges incurred to carry out the provisions of this enactment, and the provisions of the said section ten, article nine, of the constitution, authorizing and having reference to a loan of State credit to railroads, shall be borne and paid pro rata by such railroad companies as may receive the benefits thereof, and shall not be chargeable to the State.

Default in payment of interest; duty of governor.

SEC. 2. Whenever any default shall occur in the payment of interest or principal of the railroad bonds transferred to the State, so that no provision shall be made by
543 the said railroad companies as aforesaid for the ensuing payment of the interest or principal of the Minnesota State railroad-bonds, sixty days before the maturity of any installment of interest or final redemption of said State railroad bonds, as herein provided, the governor shall immediately proceed to provide for such payment or payments, and to indemnify the State for such payment or payments, or responsibility, by sale of a sufficient amount of the bonds of the defaulting company, or by sale of the lands pledged, or foreclosure of the mortgage or deed of trust of such defaulting company, or by all or any such means of indemnification, in the manner herein provided.

Default—first-mortgage bonds to be sold.

SEC. 3. The governor may, on such default, immediately advertise for thirty days in three newspapers published in the city of New York, and in one newspaper published at the seat of government of this State, that a sufficient amount of first-mortgage bonds of such defaulting company shall be sold on the fortieth day after such default, in the city of New York, to the highest bidder for cash, and such sale of bonds shall be made accordingly, and the proceeds thereof shall be returned to the treasury to indemnify the State for such default, together with all costs, charges, and damages growing out of such default and sale.

Sale of lands for default; governor to advertise sale.

SEC. 4. In case of a sale of lands to be made under and to provide for the default of any such company as aforesaid, the governor may advertise and sell the same in such parcels and at such times as shall be deemed most expedient, and all such sales or conveyances shall be made by the governor and secretary of state, and shall be absolute convey-

ances of the title in fee as far as the same may have been invested in any such company, or in the State, and without any redemption or right of redemption in any company, or subsequent creditor, person or persons whomsoever; but no sales of bonds or lands shall take place if the defaulting company shall make payment of all principal and interest then due, and all expenses incurred by the State prior to the day of sale of any such railroad bonds or lands; but this provision shall not be so construed as to prevent the governor and secretary of state, until such payment by the defaulting company, from making sales and conveyances of any parcels of lands, as aforesaid, without the consent or assistance of the defaulting company, whenever default shall occur in the provision by such company as herein
544 required, for any ensuing payment of interest or principal of the Minnesota State railroad bonds issued to such company.

Manner of foreclosing mortgages.

SEC. 5. All foreclosures of the mortgage or deed of trust of any defaulting company making such default in the payment of interest or principal of the bonds of such company, and for which default a foreclosure of the mortgage or deed of trust of such company may be required or demanded, shall be made only for and on account of the default occurring, and all such foreclosure shall be by public sale of all the properties, rights, privileges, and franchises pledged in such deed of trust or mortgage, for the payment of the interest and final redemption of such company's bonds, due notice having first been given of such intended sale, by advertisement in such manner and for such length of time as may be prescribed in said deed of trust or mortgage; and in case of any sale of any railroad or railroads, or any part thereof, constructed, or in process of construction by any railroad company, by virtue of any trust deed, or on foreclosure of any mortgage thereupon, the party or parties acquiring title under any such sale, and their associates, successors or assigns, shall have and acquire thereby, and shall exercise and enjoy thereafter, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by said mortgage or trust deed enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage, or contracting such debts, so far as the same relate and appertain to that portion of said road, or the line thereof, mentioned and described in and conveyed by said mortgage or trust deed, and no further, as fully and absolutely in all respects, as the corporators, shareholders, officers, and agents of such company might or could have done theretofore, had not such sale or foreclosure taken place. Such purchaser or purchasers, their associates, successors, or assigns, may proceed to organize anew and elect directors, distribute and dispose of stock, take the same or another name, and may conduct their business generally under and in the manner provided in the charter of such railroad company, with such changes or variations in manner and form of organization as their altered circumstances and better convenience may seem to require; provided, however, that no greater or enlarged powers shall be exercised by the

new organization than are conferred by the charter of such company.

545 SEC. 6. The governor may, at any time during the prosecution of the work on any sections of road entitling any company to an issue of State bonds, engage the services of practical engineers or surveyors to visit, examine and report upon the amount and quality of all work done or being done thereon; and such engineers or surveyors shall certify under oath to the governor the condition and character of all such work, particularly specifying the quality, extent, and character of the grading and excavations, as well as respectively all mechanical structures and other appurtenances of any such road or section, and whether in the opinion of such engineer or engineers, surveyor or surveyors, such railroad company are entitled to an issue of State bonds on account of such particular section or sections of road; but no such certificate, examination, or proof shall be deemed conclusive or final, but new surveys or examinations may be ordered, or other proof received, in the discretion and to the satisfaction of the governor before any such State bonds shall be issued thereon.

Governor may employ engineers to examine work of railroads asking loans.

SEC. 7. This act shall take effect and be in force from and after its passage.

When act to take effect.

Approved August the twelfth, one thousand eight hundred and fifty-eight.

546 An act in addition to an act entitled "An act concerning land-grant railroads."

Be it enacted by the legislature of the State of Minnesota:

Governor to foreclose.

SECTION 1. Default having been made in the payment of interest on the bonds issued by the land-grant railroad companies to and held by the State, and the trustees under the deed or deeds of trust given to secure such bonds having neglected to foreclose the same according to the provisions of such deed or deeds of trust, it is hereby made the duty of the governor to foreclose the same, or to cause the same to be foreclosed, in conformity with the provisions of such deed or deeds of trust, and in accordance with law, if, in his opinion, the public interest requires it.

Governor authorized to bid off for the State.

SEC. 2. Upon the sale of the property, rights and franchises, covered and embraced in such deed or deeds of trust under such foreclosure hereinbefore mentioned, the governor is hereby authorized and empowered, in his discretion, to bid off and purchase the same for and in the name of the State, and to make, or cause to be made to the State of Minnesota, such suitable and proper conveyances as may be necessary.

When act to take effect.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March sixth, one thousand eight hundred and sixty.

547 An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto. March 8, 1861.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That all the rights, benefits, privileges, property, franchises, and interests of the Minneapolis and Cedar Valley Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing, by the said company heretofore done or suffered, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or of any part thereof, by the governor of the State of Minnesota, or by the trustees of the first-mortgage bondholders of such road, on the 16th day of August, 1860, and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, be, and the same are hereby, continued,

Board of incorporators.

granted, and transferred to Erastus Corning, Dean Richmond, James F. Joy, James W. Brooks, Walter L. Newberry, Elliott Anthony, William Osborne, Roswell B. Mason, Platt Smith, William H. Dike, J. W. North, Thomas A. Harrison, John Jay Knox, John Abbott, and William G. LeDuc,

548 for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all liens or claims thereon by the State of Minnesota, except as herein provided.

Corp. rights granted.

All the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Minneapolis and Cedar Valley Railroad Company, by two several acts of the legislature of said Territory, the one entitled "An act to incorporate the Minneapolis and Cedar Valley Railroad Company," approved March 1st, 1856, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22d, 1857, are hereby continued, and granted to, and vested in, the said Erastus Corning, Dean Richmond, James F. Joy, James W. Brooks, Walter L. Newberry, William Osborne, Roswell B. Mason, Platt Smith, Elliott Anthony, William H. Dike, J. W. North, Thomas A. Harrison, John Jay Knox, John Abbott, and William G. LeDuc, and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minneapolis and Cedar Valley Railroad had, or might or could have, by reason of the passage of the said acts, or either or both of them, free and clear of all liens or claims of the State of Minnesota thereto, except such as are retained to the said State in or by said acts, or by the provisions of this act; and the said persons herein named, and their associates and successors, shall hereafter be known as the Minneapolis, Faribault, and Cedar Valley Railroad Company, and that the persons hereinbefore referred to and hereinbefore named shall be the directors of said company for one year and until others are elected and appointed in their place, a majority of whom shall have power to fill any

Board of directors: vacancies, how filled.

vacancy that may occur in said board prior to such first election.

For the purpose of carrying out and effecting the objects of this act, the said Minneapolis, Faribault and Cedar Valley Railroad Company, and their successors and assigns, shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and
549 provided for in the said two acts referred to in section two of this act, and be subject to all the conditions and provisions of the said acts, excepting as altered or changed by this act.

The board of directors of the said Minneapolis, Faribault and Cedar Valley Railroad Company shall consist of fifteen persons, who shall be elected by the stockholders annually.

Authorized to re-organize under original charter.

SEC. 2. And be it further enacted, That for the purpose of quieting any outstanding claims, the Minneapolis and Cedar Valley Railroad Company is hereby authorized to release to such persons hereinbefore mentioned, and their associates, any right or title which it may claim to have in and to all the rights, privileges, franchises, right of way, road-beds, depot-grounds, culverts, bridges, turnouts, and property of every character and kind belonging to, or in any manner appertaining to, said line of railroad, and said person or persons to whom such release shall be executed are hereby authorized and empowered to re-organize under the original charter of said Minneapolis and Cedar Valley Railroad Company, and under the name of the Minneapolis, Faribault and Cedar Valley Raliroad Company, which said company shall have all the powers, privileges, franchises, rights, and immunities, of every character and kind, which were possessed by the said Minneapolis and Cedar Valley Railroad Company; provided, that nothing in this act contained shall be construed as impairing the validity of the sale and foreclosure of rights, properties, and franchises of said company on behalf of the State on the 16th day of August, 1860, or as recognizing in any manner any title to such rights, properties, and franchises in such Minneapolis and Cedar Valley Railroad Company; and provided further, that the acceptance of the grants in this act contained shall be deemed a waiver of all errors and irregularities, if any, in such foreclosure and sale, by said Minneapolis, Faribault and Cedar Valley Railroad Company, or any other persons or corporation taking under the provisions of this act, as against the State of Minnesota.

Nothing construed to impair validity of sale on August 16, 1860.

Trustees of first-mortgage bonds authorized to foreclose and sell said road whendeemed advisable.

SEC. 3. And be it further enacted, That if it should be deemed advisable by the parties herein named, to correct any defects in the sale and foreclosure of said Minneapolis and Cedar Valley Railroad Company, made by the trusteees of the first-mortgage bondholders, on the 16th day of August, 1860, that William R. Marshall and John G. Forbes, who are the trustees of
550 the first-mortgage bondholders of the Minneapolis and Cedar Valley Railroad Company are hereby authorized and empowered to advertise, foreclose, and sell said Minneapolis and Cedar Valley Railroad, in accordance with the provisions of the trust-deed, together with all the privleges, immunities, right of way, road-bed, and all the prop-

erty of the said Minneapolis and Cedar Valley Railroad Company, which it had or has, if any, under and by virtue of the said trust-deed, made and executed by the said Minneapolis and Cedar Valley Railroad Company to said William R. Marshall and John G. Forbes, as trustees aforesaid, as security for the first-mortgage bonds issued by said company, which said bonds were issued and delivered by the said company to the State of Minnesota, and which are now held by said State of Minnesota as security for the payment of the bonds and interest due and to become due on certain bonds issued by said State of Minnesota to said railroad company, and upon the sale of the same, the purchaser or purchasers and their associates shall have the right to re-organize under said charter of said Minneapolis and Cedar Valley Railroad Company, and have, and use, and exercise all the powers, privileges, rights, and franchises of said original company, and shall have power to construct and complete said railroad and its branch roads to St. Paul and Hastings, as provided in the charter of the Minneapolis and Cedar Valley Railroad Company and the act entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named.'"

Title in fee-simple.

SEC. 4. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the absolute title to the road-bed, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of said Minneapolis and Cedar Valley Railroad Company, until such purchasers shall fully complete and put in running order twenty-five miles of said railroad; but said person or persons, or corporation, may have the privilege of entering into and upon said railroad-track, right of way and depot-grounds,
551 for the purpose of constructing said railroad, and may have the privilege of acquiring the right of way over the property owned by individuals, in the same way as now specified in the charter of the Minneapolis and Cedar Valley Railroad Company.

When to acquire absolute title; duty of governor when road completed.

And be it further enacted, That it shall be a condition that no title to the lands granted by the act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory of Minnesota, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named,' approved May 22d, 1857," or any other act of the legislature of the Territory of Minnesota, or of the legislature of the State of Minnesota, shall vest in said

purchaser or purchasers or corporation, or said persons herein named, or said corporation, until such person or persons, or corporation, shall construct and fully complete said railroad from the Iowa line, west of range sixteen, (16,) via Faribault, to Minneapolis, on the present located line of said road, except and so far as it may be necessary to change the same for engineering purposes in crossing the Minnesota River at Mendota, so that cars can be run continuously over the same. And upon the construction and completion of said railroad, then the said governor of said State of Minnesota, acting for and in behalf of said State, shall execute, in the name of the State of Minnesota, under the great seal thereof, a full and absolute title, in fee-simple, to all the lands which were conveyed to the said State or Territory in Minnesota by an act of Congress approved March 3d, 1857, and entitled "An act making a grant of land to the Territory of Minnesota in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to said Minneapolis and Cedar Valley Railroad Company, or to which it would under any law in the Territory or State of Minnesota, or in any way or manner, be entitled, and upon the execution of said deed the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

Title in fee-simple.

552 SEC. 5. And be it further enacted, That the land granted or intended to be granted by the provisions of this act, to this corporation, or to the persons herein named, or to the persons who shall be the purchasers of said Minneapolis and Cedar Valley Railroad, and who shall finish and complete said railroad herein mentioned, shall be and hereby are exempted from all assessments and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company, or until said company shall contract to sell the said lands; and in consideration of an annual payment of a per centum (as provided in this section) by said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation, which, by the provisions in this act contained, said corporation is to acquire, purchase, hold, possess, enjoy or use, for, in, or about construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments; and in consideration of the grants made to, and the privileges and franchises conferred upon the company organizing under this act, and of the exemption contained in this section, the said company shall, during the first three years after said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of this State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation,

Lands, when not to be exempt from taxation.

Installments' when and how made.

and shall, during the seven years after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad, and shall, from and after the expiration of ten years from the completion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad, and the payment of such per centum annually, as aforesaid, shall be, and is, in full of all taxation and assessment whatsoever.

And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of
553 which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstracts, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine, under oath, the officers and employees of said company, or other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

Penalty for false swearing.

Duty of governor, when road shall be fully completed.

SEC. 6. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete said railroad, that the governor of the State of Minnesota shall deliver, transfer, and assign to said company hereinbefore mentioned all the bonds issued to and which are now held by the State, by the Minneapolis and Cedar Valley Railroad Company.

Forfeiture road-property, &c., when.

SEC. 7. And be it further enacted, That the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned, as so granted, transferred, and assigned, upon the express condition that said Minneapolis, Faribault and Cedar Valley Railroad Company shall build and construct twenty miles of said railroad within one year from the first day of January, 1861, and fifty miles of said road within two years from said first day of January, and fully build and construct, complete, and equip said road within three years from the first day of January, 1861, (including the branch from Mendota to the south bank of the Mississippi River at St. Paul, on the route of the Root River Valley and Southern Minnesota Railroad Company; provided, that part of said road

shall not have been sooner built by the last-named company, or any company succeeding to its rights.) And upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall
554 revert to the State without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, or disposed of for the purpose of aiding the construction of said road.

May pass over the road of any other company.

SEC. 8. The said Minneapolis, Faribault and Cedar Valley Railroad Company shall have full power to enter upon and pass over the railroad of any other company whose railroad connects with or intersects and crosses that of this company, with their cars and engines, for the transportation of passengers and property; and any other company whose railroad connects, intersects, or crosses that of this company shall have like power to enter upon said railroad and pass over the same with their cars and engines; and said reciprocal use of said respective roads shall be upon such terms and conditions as may be agreed upon by said respective companies; and in case said respective companies cannot agree upon said terms and conditions, then either party may apply to the governor of this State, on ten days' notice, who shall appoint three competent and disinterested persons to decide upon such terms and conditions, and the compensation for such use; and the award of such persons shall be final and conclusive for the period of three years, when either party may request and have a new agreement or appointment of persons to determine upon the same as aforesaid.

Forfeiture on failure of company to complete twenty miles of said road, when.

SEC. 9. And be it further enacted, That as a condition precedent to the right of said persons or company hereinbefore mentioned, to receive the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned, and before any right or title whatever thereto shall vest in said persons or company, said persons or company taking under this act shall be required as a guaranty of their good faith to deposit with the treasurer of the State of Minnesota, on or before the first day of July, A. D. 1861, ten thousand dollars in cash, or in State or United States stocks, at their current value in New York, which sum so deposited shall be absolutely forfeited to the State of Minnesota upon the failure of said persons or company to complete twenty miles of said railroad on or before the first day of January, A. D. 1862; provided, that upon the construction of twenty miles of railroad as aforesaid, such persons or com-
555 pany making such deposit as aforesaid shall be and are hereby authorized to withdraw the said sum of money or said stocks; and provided further, that said persons or company shall pay to the governor, to be by him deposited with the State treasurer for the use of the State, the actual cost and expenses incurred by the State in the

foreclosure and sale of the said Minneapolis and Cedar Valley Railroad, hereinbefore referred to.

Rights of pre-emptors.

SEC. 10. And be it further enacted, That upon the failure of said persons hereinbefore named to make the deposit provided for in the last section, any other persons or company shall be entitled to take and receive the privileges, properties, rights, and franchises granted in and by this act, upon making such deposit, and shall be subject to all the liabilities, conditions, and forfeitures hereinbefore provided for, except that said last-mentioned persons or company shall not be required to complete more than ten miles of said road before the first day of January, A. D. 1862.

When act to take effect.

SEC. 11. And be it further enacted, That all persons, their heirs or legal representatives, who were entitled to the right of pre-emption under the laws of the United States to any of the lands granted to this State by the act of Congress of March 3d, 1857, to aid in the construction of said road, at the time when the line of said road was definitely fixed and located, and who have heretofore occupied the same in good faith, and shall have continued in the occupancy thereof at the time when the company organizing under this act shall become entitled to the fee thereof, shall be at liberty to purchase the same of said company for the sum of one dollar and twenty-five cents per acre; provided, that application therefor and proof of the right to purchase shall be made within six months after the fee of said lands shall be acquired by said company as aforesaid.

Disposition of property upon failure to comply.

SEC. 12. Be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved March 8th, A. D. 1861.

March 10, 1862.

556 An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That all the rights, benefits, privileges, property, franchises, and interests of the Minneapolis and Cedar Valley Railroad Company, acquired by the State of Minnesota, by virtue of any acts, deeds, sale, foreclosure, agreement or thing by the said company heretofore done or suffered, or by virtue of any law of the State, or any foreclosure and sale of the same by the trustees of the first-mortgage bondholders of such road, on the sixteenth day of August, A. D. 1860, and bid in and purchased by the governor of the State of Minnesota, for the benefit of said State, or by virtue of any forfeiture accruing from a failure to comply with the conditions imposed by any provisions of the constitution of said State, or of any law of the State, or the former Territory of Minnesota, or which have accrued to the said State under and by virtue of any of the provisions of the act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 8th, A. D. 1861, by reason of a failure on the part of the corporators or grantees therein named, or of any other persons or company, to comply with the provisions of said last-named

act, be and the same are hereby continued, granted, and transferred to Alexander Chambers, Sylvester Smith, Wm. H. Dike, Charles A. Wheaton, Franklin Steele, Henry Chaffee, Thomas A. Harrison, Eli B. Ames and John M. Gilman, William G. Le Duc and Rufus J. Baldwin, for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all liens or claims thereon by or to the State of Minnesota, and free and clear from any and all claims or liens whatever thereon except as herein provided.

Board of incorporators; corporate rights granted.

557 SEC. 2. All the rights, privileges, franchises, lands, property, and interests, heretofore granted by the Territory of Minnesota to the Minneapolis and Cedar Valley Railroad Company by the two several acts of the legislature of said Territory, the one entitled "An act to incorporate the Minneapolis and Cedar Valley Railroad Company," approved March 1st, 1856, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22, 1857, are hereby continued and granted to and vested in the said Alexander Chambers, Sylvester Smith, Wm. H. Dike, Charles A. Wheaton, Franklin Steele, Henry Chaffee, Thomas A. Harrison, Eli B. Ames, and John M. Gilman, William G. LeDuc, and Rufus J. Baldwin, and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minneapolis and Cedar Valley Railroad Company had, or might or could have, by reason of the passage of the said acts, or either or both of them, free and clear of all liens or claims of the State of Minnesota thereto, except such as are retained to the said State in or by said acts or by the provisions of this act, and the said persons herein named, and their associates and successors, shall hereafter be known as the Minneapolis, Faribault and Cedar Valley Railroad Company, and that the persons hereinbefore referred to and hereinbefore named shall be the directors of said company for one year, and until others are elected and appointed in their place, a majority of whom shall have power to fill any vacancy that may occur in said board prior to such first election.

Power of incorporation.

Board of directors; vacancies, how filled.

For the purpose of carrying out and effecting the objects of this act, the said Minneapolis, Faribault and Cedar Valley Railroad Company, and their successors and assigns, shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in section two of this act, and be subject to all the conditions and provisions of the said acts, excepting as altered or changed by this act.

558 The board of directors of the said Minneapolis, Faribault and Cedar Valley Railroad Company shall consist of eleven persons, who shall be elected by the stockholders annually.

SEC. 3. And be it further enacted, That for the purpose of quieting any outstanding claims, the Minneapolis and Cedar Valley Railroad Company is hereby authorized to release to the persons hereinbefore mentioned, and their associates, or, upon their default to comply with the provisions of this act, to such other persons and their associates, or such other company as may comply with the provisions of this act, any right or title which it may claim to have in and to all the rights, privileges, franchises, right of way, road-beds, depot-grounds, culverts, bridges, turn-outs, and property, of every character and kind, belonging to or in any manner appertaining to said line of railroad; and such persons to whom such release shall be executed are hereby authorized and empowered to reorganize under the original charter of said Minneapolis and Cedar Valley Railroad Company, and under the name of the Minneapolis, Faribault and Cedar Valley Railroad Company, which said company, so reorganized, shall have all the powers, privileges, franchises, rights, and immunities, of every character and kind, which were possessed by the said Minneapolis and Cedar Vallay Railroad Company; provided, that nothing in this act contained shall be construed as impairing the validity of the foreclosure and sale of rights, properties, and franchises of said company, on behalf of the State, on the 16th day of August, 1860, or as recognizing in any manner any title to such rights, properties, and franchises in such Minneapolis and Cedar Valley Railroad Company; and provided further, that the acceptance of the grants in this act contained shall be deemed a waiver of all errors and irregularities, if any, in such foreclosure and sale, by said Minneapolis, Faribault and Cedar Valley Railroad Company, or any other persons or corporation taking under the provisions of this act, as against the State of Minnesota.

Authorized to reorganize under original charter.

Nothing construed to impair validity of sale.

SEC. 4. And be it further enacted, That if it should be deemed advisable by the parties herein named to correct any defects in the foreclosure and sale of said Minneapolis and Cedar Valley Railroad Company, made by the trustees of the first-mortgage bondholders, on the 16th day of August, 1860, that William R. Marshall and John G. Forbes, who are the trustees of the first mortgage bondholders of the Minneapolis and Cedar Valley Railroad Company, are hereby authorized and empowered to advertise, foreclose, and sell said Minneapolis and Cedar Valley Railroad, in accordance with the provisions of the trust-deed, together with all the privileges, immunities, right of way, road-bed, and all the property of the said Minneapolis and Cedar Valley Railroad Company which it had, or has, if any, under and by virtue of the said trust-deed made and executed by the said Minneapolis and Cedar Valley Railroad Company to said Wm. R. Marshall and John G. Forbes, as trustees aforesaid, as security for the first-mortgage bonds issued by said company, which said bonds were issued and delivered by the said company to the State of Minnesota, and which are now held by said State of Minnesota as security for the payment of the bonds and interest due and to become due on certain bonds issued by said State

Trustees of first-mortgage bonds authorized to foreclose and sell said road when deemed advisable.

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of Minnesota to said railroad company, and upon the sale of the same the purchaser or purchasers and their associates shall have the right to reorganize under said charter of said Minneapolis and Cedar Valley Railroad Company, and have, and use, and exercise all the powers, privileges, rights, and franchises of said original company, and shall have power to construct and complete said railroad and its branch roads to St. Paul and Hastings, as provided in the charter of the Minneapolis and Cedar Valley Railroad Company and the act entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named.'"

When to acquire absolute title; duty of governor when road completed.

SEC. 5. And be it further enacted, That it is hereby made a condition of the grants herein made, and the privileges and benefits herein conferred, that the absolute title to the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of said Minneapolis and Cedar Valley Railroad Company, shall not vest in the said Minneapolis, Faribault and Cedar Valley Railroad Company, or the person or persons, or the purchaser or purchasers, or corporation herein named or referred to, until they shall have fully constructed and put in running order ten miles of said railroad; but said person or persons, purchaser or purchasers, or corporation, shall have the privilege of entering into and upon said railroad track, right of way, and depot-grounds, for the purpose of constructing said railroad, and shall have the privilege of acquiring the right of way over the property owned by individuals, in the same way as prescribed in the said charter of the said Minneapolis and Cedar Valley Railroad Company.

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And be it further enacted, That it shall be a condition of the grants and benefits conferred by this act that no title to the lands granted by an act entitled "An act to execute the trusts created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory of Minnesota, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named,'" approved May 22, 1857, or any other act of the legislature of the Territory or State of Minnesota, shall vest in the persons, purchasers, or company availing themselves of, and taking under the provisions of this act, except in the manner and at the time or times and upon the conditions following, to wit:

Said persons or company, taking under the provisions of this act, shall construct and fully complete said railroad ready for business, and so that the cars can be run continuously over the same from the Iowa line, west of range six-

teen, (16,) via Faribault, to Minneapolis, on the present located line of said road, except so far as it may be necessary to change the same for engineering purposes in crossing the Minnesota River, by the first day of January, A. D. 1866; and upon the construction and completion of fifty continuous miles of said railroad, the governor of the State shall certify the same to the Secretary of the Interior, and shall execute, in the name of the State of Minnesota, under the great seal thereof, a deed in fee-simple to said persons or company in and to so many and such portions of the lands appertaining to the completed portion of said road, and not exceeding one hundred and twenty sections, as the State may then be entitled to under and by virtue of the act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in that State;" and whenever the entire road is completed as aforesaid from the Iowa line, via Faribault, to Minneapolis, so that cars can be run continuously over the same, the governor shall so certify to the Secretary of the Interior, and shall execute as aforesaid a deed to said persons or company in and to all the lands to which the said State shall then be entitled to under said act for the construction of the said road, and which would have accrued to the said Minneapolis and Cedar Valley Railroad Company, or to which it would, under any law of the Territory or State of Minnesota, or in any way or manner, be entitled, and upon the execution of said deed the said company or the said persons shall have the absolute, full, and complete title to the said lands in fee-simple.

Title in fee-simple.

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Lands, when not to be exempt from taxation.

SEC. 6. And be it further enacted, That the land granted or intended to be granted by the provisions of this act to this incorporation, or to the persons herein named, or to the persons who shall be the purchasers of said Minneapolis and Cedar Valley Railroad, and who shall finish and complete said railroad herein mentioned, shall be, and hereby are, exempted from all assessments and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company, or until said company shall contract to sell the said lands; and in consideration of an annual payment of a per centum (as provided in this section) by said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation, which, by the provisions of this act contained, said corporation is to acquire, purchase, hold, possess, enjoy, or use, for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be, and hereby are, forever exempt from all taxation and from all assessments; and in consideration of the grants made to, and the privileges and franchises conferred upon, the company organizing under this act, and of the exemption contained in this section, the said company shall, during the first three years after said railroad shall be completed

and in operation, on or before the first day of March of each and every year, pay into the treasury of this State one per cent. of the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation,
562 and shall, during the seven years after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroads; and the payment of such per centum annually as aforesaid shall be and is in full of all taxation and assessments whatsoever.

Installments, when and how made.

And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine, under oath, the officers and employees of said company, or other persons, and if any person so examined by the governor or other authorized persons shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person shall be deemed guilty of perjury, and be subject to the pains and penalties thereof. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

Penalty for false swearing.

SEC. 7. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete said railroad, that the governor of the State of Minnesota shall deliver, transfer, and assign to said company hereinbefore mentioned all the bonds issued by the Minneapolis and Cedar Valley Railroad Company to and now held by the State.

Duty of governor when road fully completed.

SEC. 8. And be it further enacted, That the rights, privileges, franchises, and immunities, road-bed, right of way, and properties and benefits hereinbefore granted, conferred, transferred, and assigned, are so granted, con-
563 ferred, transferred, and assigned upon the further express condition, to wit: That if any time hereafter, any duly organized railroad company, or any nine or more persons other than those hereinbefore named in the first and

second sections of this act, shall file with the governor of this State a written proposition to the effect that they are willing to take and receive the privileges, properties, rights, immunities, and franchises granted in and by this act, and upon and subject to the terms, conditions, and forfeitures herein provided for, and to fully construct and complete said line of railroad, and the branch to West St. Paul, in the manner and at the time and times required in sections five and ten of this act, and shall, at the same time, as a guarantee of good faith, deposit with the governor ten thousand dollars in cash, or in State or United States stocks, at their current value in New York; and said governor, whose duty it shall be, shall thereupon notify the said persons or grantees hereinbefore named of the filing of such proposition, and the making of such deposit, by serving a written notice thereof upon either of said persons, or, in case they have become organized, upon the president of the company; then and thereupon the said persons or company so notified shall, within sixty days thereafter, make a like deposit with said governor, upon like conditions, and become bound to complete said road and branch in the same manner and times as provided in said sections five and ten of this act, in default of which the governor shall cause a statement to be filed in his office, reciting the facts showing such default, and declaring the same to have occurred; whereupon such persons or company so in default shall forfeit absolutely, and without any further act or legal proceedings therefor, all the benefits, privileges, immunities, rights, franchises, and properties whatever conferred and granted by this act, or any act or acts to which this is amendatory, or in case they shall have built and constructed any portion of said road, not less than ten miles, all the unbuilt portions thereof, together with the rights, privileges, franchises, road-beds, and properties appertaining thereto, and the same shall thereupon, without any further proceedings or legislation therefor, be and become transferred to and vested in the said persons, their associates and successors, or company, who shall have filed said proposition and made the deposit aforesaid, upon the same conditions and subject to the same forfeitures as are provided in this act, and they shall possess and enjoy the same, and be entitled to receive all the benefits herein conferred, as fully and to the same extent as the said persons named in the first and second sections of this act might or could have possessed and enjoyed; provided, that the said persons so taking under the provisions of this act, and their associates, shall organize under the name of the Minneapolis, Faribault and Cedar Valley Railroad Company, the first board of directors of which shall consist of the first nine persons subscribing to the proposition filed by them as aforesaid with the governor, who shall remain such directors for one year, or until others are chosen.

Forfeiture of road, property, &c., when.

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SEC. 9. The deposit provided for and made under the next preceding section shall be absolutely forfeited to the State of Minnesota upon the failure of the persons or company making the same to complete ten continuous miles of said

Forfeiture upon failure to comply with provisions of preceding section.

road within six months after making such deposit, but the same shall be returned to them upon such completion within six months as aforesaid; and in case any parties making the said proposition and deposit shall be prevented from taking the benefits and franchises conferred by this act, by reason of other parties making a similar deposit, as provided in said section eight, then the same shall be immediately returned to them.

SEC. 10. As a further condition upon which the corporation organized or taking under the provisions of this act shall be entitled to the benefits thereof, the said corporation shall, within six months after the making of the deposit by them as hereinbefore provided, build and construct, ready for the cars, ten continuous miles of said road on the present located line thereof, and shall further build and construct, during each and every year thereafter, thirty additional miles of said road; provided, that the entire line of said road shall be fully built, constructed, and equipped by the first day of January, A. D. 1866, together with the branch from Mendota to the south bank of the Mississippi River, at West St. Paul, on the route of the Root River Valley and Southern Minnesota Railroad Company; provided, that part of said road shall not have been sooner built by the last-named company, or any company succeeding to its rights. And upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any further act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of said road.

When entire line to be completed.

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SEC. 11. The said Minneapolis, Faribault and Cedar Valley Railroad shall transport by all regular trains all passengers and freight delivered to the same by any connecting line of railroad now or hereafter to be constructed, on the same terms and at no greater rate then for the time being shall be charged for the same service to persons living on the line of said road; provided, that any such connecting line shall be governed by the same rules in transporting passengers and freight on their several lines delivered by the said Minneapolis, Faribault and Cedar Valley Railroad.

Regulation for transportation of passengers and freight.

SEC. 12. And be it further enacted, That all persons, their heirs, or legal representatives, or assigns, who were entitled to the right of pre-emption, under the laws of the United States, to any of the lands granted to this State by the act of Congress of March 3d, 1857, to aid in the construction of said road, at the time when the line of said road was definitely fixed and located, and who have heretofore occupied the same in good faith, and shall have continued in the occupancy thereof at the time when the company organizing under this act shall become entitled to the fee thereof, shall be at liberty to purchase the same of said

Rights of pre-emptors.

company at two dollars and fifty cents per acre, if within the six-mile limits of the line of said road; and if without such limits, at one dollar and twenty-five cents per acre; provided, that application therefor and proof of the right to purchase shall be made within six months after the fee of said lands shall be acquired by said company as aforesaid.

Repeal of former acts.

SEC. 13. Section eight of chapter two of the special laws of 1861, and all acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

When act to take effect.

SEC. 14. This act shall take affect from and after its passage.

Approved March 10, 1862.

March 6, 1863.

566 And act to amend an act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 10th, 1862.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. The act of the legislature of the State of Minnesota, entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 10th, 1862, is hereby amended so as to read as follows:

Transfer of rights, benefits, franchises, and interests of said road.

SEC. 1. That all the rights, benefits, privileges, property, franchises, and interests of the Minneapolis and Cedar Valley Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company heretofore done or suffered, or by virtue of any law of the State, or any foreclosure and sale of the same, by the trustees of the first-mortgage bondholders of such road, on the 16th day of August, A. D. 1866, and bid in and purchased by the governor of the State of Minnesota for the benefit of said State, or by virtue of any forfeiture accruing from a failure to comply with the conditions imposed by any provisions of the constitution of said State, or of any law of the State or of the former Territory of Minnesota, or which have accrued to the said State under and by virtue of any of the provisions of an act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 8th, A. D. 1861, by reason of a failure on the part of the corporators or grantees therein named, or of any other persons or company, to comply with the provisions of said last-named act, be, and the same are hereby, continued, granted, and transferred to D. N. Barney, Jesse Hoyt, Angus Smith, A. A. Barney, Wm. Lamb, J. G. Camp, W. G. Fargo, Lewis H. Meyer, and H. L. Dousman, their successors and associates, for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all liens or claims thereon by or to the State of

In whom vested.

Minnesota, and free and clear from any and all claims or liens whatever thereon, except as herein provided.

567 SEC. 2. All the rights, privileges, franchises, lands, property, and interest, heretofore granted by the Territory of Minnesota to the Minneapolis and Cedar Valley Railroad Company by the two several acts of the legislature of said Territory, the one entitled "An act to incorporate the Minneapolis and Cedar Valley Railroad Company," approved March 1st, 1856, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named," approved May 22, 1857, are hereby continued and granted to and vested in the said D. N. Barney, Jesse Hoyt, Angus Smith, A. H. Barney, Wm. Lamb, J. G. Camp, W. G. Fargo, Lewis H. Meyer, and H. L. Dousman, and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minneapolis and Cedar Valley Railroad Company had, or might or could have, by reason of the passage of the said acts, or either or both of them, free and clear of all liens or claims of the State of Minnesota thereto, except such as are retained to the said State in or by said acts, or by the provisions of this act; and the said persons herein named, and their associates and successors, shall hereafter be known as the Minnesota Central Railroad Company. For the purpose of carrying out and effecting the objects of this act, the said Minnesota Central Railroad Company, and their successors and assigns, shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in section two of this act, and be subject to all the conditions and provisions of the said acts, excepting as altered or changed by this act, and shall have and be possessed of full power and authority to mortgage the property and franchises belonging and appertaining to said company.

Power of incorporation.

SEC. 3. The persons named in the first section of this act shall constitute a board of directors, a majority of whom shall be a quorum, who shall serve for one year, or until their successors are chosen and qualified, and the officers and directors of said company shall not be required

568 to be residents of this State, and said persons may hold a meeting within the year for the election of directors. The board of directors of said company shall thereafter consist of nine persons, to be elected by the stockholders. Elections for directors shall be held annually, at such time and place, either within or without this State, as may be fixed by the by-laws of said company. All vacancies may be filled by the remaining members of the board.

Board of electors to be elected by stockholders annually.

SEC. 4. And be it further enacted, That it is hereby made a condition of the grant herein made, and the privileges and benefits herein conferred, that the absolute title to the

When incorporation to acquire absolute title.

road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, immunities, and franchises, and the track and line of said Minneapolis and Cedar Valley Railroad Company, shall not vest in the said Minnesota Central Railroad Company, or the incorporators herein named and referred to, until they shall have expended the sum of one hundred thousand dollars upon the construction of the said road, fifty thousand dollars of which shall be expended between Owatonna and the Iowa State line, on or before the 1st day of January, 1864; provided, that said company, as an evidence of its good faith and ability to construct said road, shall deposit with the governor, within ninety days from the time of the passage of this act, ten thousand dollars in money or United States bonds, or bonds of this State other than railroad bonds, to be withdrawn as soon as ten miles of said road shall be completed, with the cars running thereon; and upon the failure of the said Minnesota Central Railroad Company to comply with the before-mentioned provisions within the time herein specified, then the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises of the Minneapolis and Cedar Valley Railroad Company, herein conditionally granted to the Minnesota Central Railroad Company, shall, without any further act or legal proceeding, revert to and become vested in Alexander Chambers, Sylvester Smith, W. H. Dike, Charles A. Wheaton, Franklin Steele, Henry Chaffee, Thos. A. Harrison, Eli B. Ames, John M. Gilman, Wm. G. LeDuc, Rufus J. Baldwin, or the survivors of them, said persons being incorporators in an act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 10, 1862, and to which this act is amendatory. And upon such failure and reversions, the persons in this section named, their successors and assigns, shall be possessed of all the rights, franchises, property, and privileges which are herein conferred upon the persons named in the first section of this act; and they shall thereupon be the directors of the said Minnesota Central Railroad Company for one year, and until others are chosen and qualified, and may make all rules and by-laws, not inconsistent with this act, for the transaction of their business and the control and management of the said railroad and its property and rights. The incorporators named in the first section of this act shall have the privilege of entering into and upon said railroad track, rights of way, and depot-grounds, for the purpose of constructing said railroad, and shall have the privilege of acquiring the right of way over the property owned by individuals in the same way as prescribed in the said charter of the said Minneapolis and Cedar Valley Railroad Company.

Who the rights, property, and franchises revert to in case of failure to comply with the provisions of this act.

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SEC. 5. And be it further enacted, That it shall be a condition of the grants and benefits conferred by this act, that no title to the lands granted by an act entitled "An act to execute the trusts created by the act of Congress entitled 'An act making a grant of lands to the Territory of Minne-

sota, in alternate sections, to aid in the construction of certain railroads in said Territory of Minnesota, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named,'" approved May 22d, 1857, or any other act of the legislature of the Territory or State of Minnesota, shall vest in the company taking under the provisions of this act, except in the manner and at the time and upon the conditions following, to wit: Said company taking under the provisions of this act shall construct and fully complete said railroad, ready for business, and so that the cars can be run continuously over the same, from the Iowa line west of range sixteen, (16,) via Faribault, to Minneapolis and West St. Paul or St. Paul, on the present located line of said road, except so far as it may be necessary to change the same for engineering purposes, in crossing the Minnesota and Straight Rivers, by the first day of January, A. D. 1866; and upon such construction and completion, the governor of the State shall certify the same to the Secretary of the Interior, and shall execute in the name of the State of Minnesota, and under the great seal thereof, a deed in fee-simple to said persons or company, in and to so many and such portions of the lands appertaining to said road, as the State may then be entitled to under and by virtue of the act of Congress entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," or to which it would, under any law of the Territory or State of Minnesota, or in any way or manner be entitled, and upon the execution of said deed, the company or the said persons shall have the absolute, full and complete title to the said lands in fee simple; provided, that the said road shall be constructed, completed, and operated to Minneapolis as soon as it shall be constructed, completed, and operated to St. Paul or West St. Paul.

Duty of governor on completion of said road.

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And be it further enacted, That if at any time the Congress of the United States should make a further grant of lands to the State of Minnesota, for the purpose of making good the quantity of lands to which the Minneapolis and Cedar Valley Railroad was entitled, under the act of Congress granting lands to the State of Minnesota for railroad purposes, and which are now deficient, all said lands so granted to the State are hereby pledged, granted to, and shall become vested in the Minnesota Central Railroad Company, on the terms and in the manner following: Whenever any continuous twenty miles of said road shall be completed, with the running of regular trains of cars on the same, it shall be the duty of the governor to certify the same to the Secretary of the Interior, and thereupon, and not before, said company may demand and shall be entitled

Duty of governor on the completion of every twenty consecutive miles.

to receive from the governor, in the name and for the State, a deed in fee-simple for one hundred and twenty sections of land; and in like manner and whenever as often as a further distance of twenty miles shall be so completed, the governor shall certify the same to the Secretary of the Interior, and in like manner convey to said company another quantity of one hundred and twenty sections of land, and so, from time to time, till said road is completed; and when the entire length of said road shall be completed, with cars running over the same, it shall be the duty of the governor to certify the same to the Secretary of the Interior,
571 and thereupon convey by deed in fee-simple, to said company, whatever lands, if any, there may remain, and to which the company may be entitled; provided, that if the amount of lands hereafter to be granted as aforesaid, together with the lands heretofore granted, shall not be sufficient to supply one hundred and twenty sections of land for every twenty miles of road, then and in that case said company shall be entitled for every twenty miles completed, with cars running thereon, as aforesaid, to demand and receive a deed as aforesaid, for such proportion only of the lands to be hereafter granted, as such length of twenty miles bears to the whole length of said proposed road from Minneapolis to the Iowa line.

When exempt from assessment and taxation.

SEC. 6. And be it further enacted, That the lands granted or intended to be granted by the provisions of this act, to the company herein named, and who shall finish and complete said railroad herein mentioned, shall be, and hereby is, exempted from all assessments and from all taxation whatever, by virtue of any act of the State, or any county, town or municipal authorities, until the same shall have been sold and conveyed by the said company, or until said company shall contract to sell the said lands; and in consideration of an annual payment of a per centum (as provided in this section) by said company as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said company, which, by the provisions of this act contained, said company is to acquire, purchase, hold, possess, enjoy, or use, for, in, or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be, and hereby are, forever exempt from all such taxation, and from all such assessments as aforesaid; and in consideration of the grants made to, and the privileges and franchises conferred upon the company taking under this act, and of the exemption contained in this section, the said company shall, during the first three years from and after said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of this State one per cent. on the net earnings of said railroad; and said company shall, during the next seven years after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad, and shall, from
572 and after the expiration of ten years from the com-

Installments, when and how made.

pletion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually, as aforesaid, shall be, and is, in full of all such taxation and such assessment whatsoever, as aforesaid. And, for the purpose of ascertaining the net and gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavit of the treasurer and secretary of said company; and, for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law, empowered to examine under oath the officers and employees of said company or other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person shall be deemed guilty of perjury, and be subject to the pains and penalties thereof. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the right of way, road-beds, depot-grounds, turnouts, switches, rolling-stock, and the track and line of the railroad of said company.

Penalty for perjury.

SEC. 7. It is hereby stipulated, as a further condition on which the grant of privileges to said company is made, that said company shall complete the grading of said road, ready for the superstructure, by the first day of January, 1865, and shall complete the construction and equipment of the entire line of said road by the first day of January, A. D. 1866, together with the branch from some point on the main line to the city of Hastings, and from Mendota to the south bank of the Mississippi River, at West St. Paul or St. Paul; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road and branches, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert, without any further act or legal proceedings, to the persons named in the fourth section of this act, or the survivors of them, who shall thereupon be possessed and vested with the same, with all the rights,
573 powers, privileges, duties, and franchises pertaining thereto, provided in the said fourth section of this act, except the duty of expending the said sum of one hundred thousand dollars; but the rights, privileges, franchises, and lands pertaining to such portion of said road as shall be completed as herein provided, shall continue in and remain with said company, unaffected by any forfeiture provided by this section of this act. And said company is hereby authorized and empowered to build a branch of said road to Hastings and West St. Paul or St. Paul; and said company is further authorized to extend said road from Minneapolis to St. Anthony.

When property, rights, and franchises may be forfeited.

Construction of fences, how governed.

SEC. 8. That whenever the owner or occupant of any land through which said road shall pass, or adjoining the line of said road, shall enclose with a fence his or her lands, bounded in part by said road, said company shall construct and maintain its portion of the same in the same manner that individuals are or may be required by law to erect and maintain partition-fences, and all fences erected on the line of said road by said company, or by the owners or occupants of lands along the line thereof, shall be considered partition-fences, and be in all respects governed by the laws in force regulating the same. Said company shall construct all necessary farm-crossings over the line of their said road. At any time after the expiration of ten years from and after the passage of this act, the legislature shall have full power to alter the provisions of this section, and to make such further and other rules and regulations respecting the construction and maintenance of farm and cattle guards by said company as they may deem best.

May construct telegraph lines.

SEC. 9. Said company may construct a telegraphic line upon its road, connect with other telegraphic lines, and charge fees for transmitting messages thereon.

Regulations for transportation of passengers and freight.

SEC. 10. The said Minnesota Central Railroad shall transport, by all regular trains, all passengers and freights delivered to the same, by any connecting line of railroad now or hereafter to be constructed, on the same terms, and at no greater rate, than for the time being shall be charged for the same service to persons living on the line of said road; provided, that any such connecting line shall be governed by the same rules in transporting passengers and freight on their several lines, delivered by the said Minnesota Central Railroad; provided further, that the Minnesota Central Railroad Company shall charge no
574 greater or higher rates for the conveyance of passengers or freight destined for transmission over the Root River Valley and Southern Minnesota Railroad than over its own or any connecting line of railroad.

Rights of preemptors.

SEC. 11. And be it further enacted, That all persons, their heirs or legal representatives, or assigns, who were entitled to the right of pre-emption under the laws of the United States to any of the lands granted to this State by the act of Congress of March 3, 1857, to aid in the construction of the said road, at the time when the line of said road was definitely fixed and located, and who have heretofore occupied the same in good faith, and shall have continued in the occupancy thereof at the time when the company taking under this act shall become entitled to the fee thereof, shall be at liberty to purchase the same of said company, at two dollars and fifty cents per acre, if within the six-mile limits of the line of said road, and if without such limits, at one dollar and twenty-five cents per acre; provided, that application therefor, and proof of the right to purchase, shall be made within six months after the fee to said lands shall be acquired by said company as aforesaid.

Amount of capital stock limited.

SEC. 12. Section three of the act incorporating the Minneapolis and Cedar Valley Railroad Company, approved

March 1st, 1856, is hereby amended, by substituting as follows: The capital stock, including the mortgage or bonded debt of said road, shall not exceed the amount of two millions five hundred thousand dollars, which shall be deemed personal property, and be transferable in such manner as the by-laws of said company may direct.

Repeal of inconsistent acts.

SEC. 13. All acts and parts of acts repugnant to or inconsistent with this act are hereby repealed.

When act to take effect.

SEC. 14. This act shall take effect and be in force from and after ten days from its passage, and shall be accepted by the board of directors of the Minneapolis, Faribault and Cedar Valley Railroad Company. And no change or amendment of this act by the legislature, in respect to the route, termini, or lands of said road, shall take effect prior to the full completion of said road, as provided in this act, until the same shall have been submitted to and accepted by the persons named in the fourth section of this act, or the survivors of them, and said persons are continued as directors of the Minneapolis, Faribault and Cedar Valley Railroad Company, for the purposes named in this section.

Approved March 6, 1863.

575 An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement or thing, by the said company heretofore done or suffered, or by virtue of any law of the State, or any foreclosure by the gove'nor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or of any part thereof, by the gove'nor of the State of Minnesota, and bid in and purchased by the gove'nor of the State of Minnesota for the benefit of the State of Minnesota, be, and the same are hereby, held in trust, to be continued, granted, and transferred, for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all liens or claims thereon by the State of Minnesota, except as herein provided.

All the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Com-
576 pany by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," and an act entitled "An act to execute the trust
577 created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22, 1857, are hereby declared to be held in trust

by the State of Minnesota, to be continued and granted to and vested in B. Mills, Elihu Hunt, Luke Miller, W. R. Robinson, A. G. Chatfield, Parker Paine, J. H. McKinney, Daniel W. Ingersoll, and Henry T. Wells, and their successors, with all the immunities, rights, property, benefits, and privileges which the said Southern Minnesota Railroad Company had, or might, or could have, by reason of the passage of the said acts, or either or both of them, free and clear of all liens or claims of the State of Minnesota thereto, except such as are retained to the said State in or by said acts, or by the provisions of this act.

In whom vested.

For the purpose of carrying out and effecting the objects of this act, the Southern Minnesota Railroad Company and their successors and assigns shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in section two of this act, and be subject to all the conditions and provisions of the said acts, excepting as altered or changed by this act.

Board of directors.

The board of directors of the said Southern Minnesota Railroad Company shall consist of nine persons, who shall be elected by the stockholders annually.

When to acquire title to road-bed, &c.

SEC. 2. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the title to the road-bed, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of said Southern Minnesota Railroad Company, until said company shall fully complete and put in running order ten miles of said railroad; but said person or persons or corporation may have the privilege of entering into and upon said railroad track, right of way, and depot grounds for the purpose of constructing said railroad, and may have the privilege of acquiring the right of way over the property owned by individuals in the same way as now specified in the charter of the Root River Valley and Southern Minnesota Railroad Company.

Privileges of said corporation.

578 And said company are hereby authorized and required to construct a railroad, with one or more tracks, from a point of junction with the Root River line at or near Hokah, to the village of Brownsville, in the county of Houston, as provided in an act to execute the trusts created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory," approved May 22d, 1857, within one year after the road is completed from La Crescent to Rochester, and said company or corporation are also hereby empowered and authorized to survey, locate, and complete, and perpetually to have, use, and maintain and operate their line of road from Mankato, via South Bend, to the southern boundary of the Territory, in the direction of the Big Sioux River. And upon the construction and completion of each and every consecutive twenty miles of said railroad as aforesaid, then said governor of said State of Minnesota, acting for and in behalf of said State, shall execute in the name of the State of Min-

Duty of governor.

nesota, under the great seal thereof, a full and absolute title in fee-simple to all the lands appertaining thereto, which were conveyed to the said State or Territory of Minnesota by an act of Congress, passed March 3d, 1857, and entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to said Root River Valley and Southern Minnesota Railroad Company, or to which it would, under any law of the Territory or State of Minnesota, or in any way or manner, be entitled; and upon the execution of said deed, the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

When exempt from assessment and taxation.

SEC. 3. And be it further enacted, That the land granted or intended to be granted by the provisions of this act to this corporation, or to the persons herein named, or to the persons who shall be the purchasers of said Southern Minnesota Railroad, and who shall finish and complete said railroad herein mentioned, shall be and hereby are exempted from all assessments and from all taxation whatsoever until the same shall have been sold and conveyed by the said company, and in consideration of an annual payment
579 of a per centum (as provided in this section) by said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation, which by the provisions of this act contained said corporation is to acquire, purchase, hold, possess, enjoy, or use, for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments; and in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, during the first three years after said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation; and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatsoever.

To ascertain gross earnings of said road.

And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstracts, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine under oath the officers and employees of said company, or other persons; and if any person so examined by the governor or other authorized person shall knowingly or willingly swear falsely concerning the
580 matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatsoever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

When bond to be transferred to said company.

SEC. 4. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete said railroad, *that* the governor of the State of Minnesota shall deliver, transfer, and assign the said company hereinbefore mentioned all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.

Rights, privileges &c., upon what condition to be transferred to said company.

SEC. 5. And be it further enacted, That the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned are so granted, transferred, and assigned upon this express condition, that said Southern Minnesota Railroad Company shall build and construct ten miles of said railroad within one year from the first day of January, 1861, and fifty miles of said road within two years from said first day of January, and fully build and construct and complete and fully equip said road from La Crescent, via Chatfield, to Rochester, and from Saint Paul and Saint Anthony, via Minneapolis, to a point of junction at Shakopee, in the county of Scott, and thence on the present located line thereof to Mankato, within three years from the first day of January, 1861, and the whole of said line within ten years from the 3d day of March, 1857; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of said road.

To give bonds to be deposited with treasurer, in what sum.

SEC. 6. And be it further enacted, That as a condition precedent to the right of said persons or company hereinbefore mentioned to receive the rights, privileges, franchises, road-bed, right of way, properties, and im-
581 munities hereinbefore granted and assigned, and before any right or title whatever thereto shall vest in said persons or company, said persons or company taking under this act shall be required, as a guarantee of their good faith, to deposit with the treasurer of the State of Minnesota, on or before the first day of July, A. D. 1861, ten thousand dollars in cash, or State or United States stocks at their current value in New York, which sum so deposited shall be absolutely forfeited to the State of Minnesota upon the failure of said persons or company to complete ten miles of said railroad on or before the first day of January, A. D. 1862: Provided, That upon the construction of the said ten miles of railroad as aforesaid, said persons or company making such deposit as aforesaid shall be and are hereby authorized to withdraw the said sum of money.

In case of failure to comply.

SEC. 7. And be it further enacted, That upon the failure of said persons hereinbefore named to make the deposit provided for in the last section, any other persons or company shall be entitled to take and receive the privileges, properties, rights, and franchises granted in and by this act, upon making such deposit, and shall be subject to all the liabilities, conditions, and forfeitures hereinbefore provided for.

Rights of pre-emptors.

SEC. 8. And be it further enacted, That all persons, their heirs or legal representatives, who were entitled to the right of pre-emption under the laws of the United States to any of the lands granted to this State by the act of Congress of March 3d, 1857, to aid in the construction of said road, at the time when the line of said road was definitely fixed and permanently located, and who have heretofore occupied the same in good faith, and shall have continued in the occupancy thereof at the time when the company organizing under this act shall become entitled to the fee thereof, shall be at liberty to purchase the same of said company for the sum of one dollar and twenty-five cents per acre: Provided, That application therefor and proof of the right to purchase shall be made within six months after the fee of said lands shall be acquired by said company as aforesaid.

When act to take effect.

SEC. 9. Be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved March 8, 1861.

March 10, 1862.

582 An act to facilitate the construction of the Root River Valley and Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto.

Be it enacted by the legislature of the State of Minnesota:

Transfer of rights, benefits, property, &c., of said road; in whom vested.

SECTION 1. That all the rights, benefits, privileges, property, franchises, and interests of the Root River Valley and Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company heretofore done or suffered, or by reason of any forfeitures, or by virtue of any law of the State or any foreclosure by the

governor of the State, acting for and in behalf of the State, or by reason of a sale of the same or any part thereof by the governor of the State of Minnesota, and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, be and the same are hereby held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all liens or claims thereon by the State of Minnesota, except as herein provided.

All the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22d, 1857, are hereby declared to be held in trust by the State of Minnesota, to be continued and granted to and invested in B. Mills, Edward Thompson, A. G. Chatfield, Luke Miller, J. H. McKenney, C. H. See, Daniel W. Ingersoll, W. R. Robinson, Parker Paine, and Richard Chute, who are created a body corporate, under the name and style of the Root River Valley and Southern Minnesota Railroad Company, and their successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company had or might or could have by reason of the passage of the said acts, or either or both of them, free and clear of all liens or claims of the State of Minnesota thereto, except such as are retained to the said State in or by said acts, or by the provisions of this act.

Board of incorporators.

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For the purpose of carrying out and effecting the object of this act, the Root River Valley and Southern Minnesota Railroad Company, and their successors and assigns, shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in this section, and be subject to all the conditions and provisions of the said acts, excepting as altered or changed by this act.

Board of directors.

The board of directors of the said Root River Valley and Southern Minnesota Railroad Company shall consist of not less than five nor more than ten persons, who shall be elected by the stockholders annually, a majority of whom shall constitute a quorum, and may adopt such by-laws from time to time as may be necessary to carry out the objects of this act.

Who may call meetings of the board.

SEC. 2. That any five of the grantees named in section one of this act are hereby authorized to call the first meeting of the company at some convenient place of meeting, by giving all parties interested ten days' notice, through the post-office, of the time of the meeting.

When to acquire title to road bed, right of way, &c.

SEC. 3. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the title to the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of said Root River Valley and Southern Minnesota Railroad Company, until said company shall fully complete and put in running order ten miles of said railroad; but said person or persons, or corporation, may have the privilege of entering into and upon said railroad-track, right of way, and depot-grounds for the purpose of constructing said railroad, and may have the privilege of acquiring the right of way over the property owned by individuals, in the same way as now specified in the charter of the, Root River Valley and Southern
584 Minnesota Railroad Company, or Southern Minnesota Railroad Company.

And said company are hereby authorized and required to construct a railroad with one or more tracks, from a point of junction with the Root River line at or near Hokah, to the village of Brownsville, in the county of Houston, as provided in an act to execute the trusts created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory," approved May 22d, 1857, within one year after the road is completed from La Crescent, via Chatfield, to Rochester, and said company or corporation are also hereby empowered and authorized to survey, locate, and complete, and perpetually to have, use, and maintain and operate their line of road from Mankato, via South Bend, to the southern boundary of the State, in the direction of the Big Sioux River.

Duty of governor on completion of ten continuous miles of road.

And upon the construction and completion of ten continuous miles of said road, commencing at La Crescent, with the running of cars thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to under the provisions of the act of Congress hereinbefore referred to, approved March 3d, 1857, for the purpose of aiding in the construction of said road; and upon construction and completion of each and every consecutive twenty miles of said railroad as at present located, then said governor of said State of Minnesota, acting for and in behalf of said State, shall execute in the name of the State of Minnesota, under the great seal thereof, a full and absolute title in fee-simple to all the lands appertaining thereto, which were conveyed to the said State or Territory of Minnesota by an act of Congress passed March 3d, 1857, and entitled "An act

making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to said Root River Valley and Southern Minnesota Railroad Company, or to which it
585 would under any law of the Territory or State of Minnesota, or in any way or manner, be entitled; and upon the execution of said deed, the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

When to have absolute title to said lands.

When exempt from assessment and taxation.

SEC. 4. And be it further enacted, That the land granted or intended to be granted by the provisions of this act to this corporation, or to the persons herein named [or to the persons] who shall be the purchasers of said Southern Minnesota Railroad, and who shall finish and complete said railroad herein mentioned, shall be and hereby are exempted from all assessments and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company; and in consideration of an annual payment of a per centum (as provided in this section) by said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation which by the provisions of this act contained said corporation is to acquire, purchase, hold, possess, enjoy, or use, for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments; and in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, during the first three years after said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of this State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation; and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatsoever.

Installments, when and how made.

And for the purpose of ascertaining the gross earn-
586 ings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year,

the truth of which abstract shall be verified by affidavits of treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstracts, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine under oath the officers and employees of said company, or other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or willingly swear falsely, concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

Penalty for perjury.

SEC. 5. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete said railroad, then the governor of the State of Minnesota shall deliver, transfer, and assign to said company hereinbefore mentioned all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.

When bonds to be delivered and transferred to said company.

SEC. 6. And be it further enacted, That the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned, are so granted, transferred, and assigned upon this express condition, that said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, shall build and construct ten miles of said railroad within one year from the first day of January, 1862, and forty miles of said road within two years from said first day of January, and fully build and construct and complete and fully equip said road from La Crescent, via Chatfield, to Rochester, and from Saint Paul and Saint Anthony, via Minneapolis, to a point of junction at Shakopee, in the county of Scott, and thence on the present located line thereof to Mankato, within three years from the first
587 day of January, 1862, and the whole of said line within ten years from the 3d day of March, 1857; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of this road.

Rights, privileges, &c., upon what conditions to be assigned to said company.

SEC. 7. And be it further enacted, That all persons, their heirs or legal representatives, who were entitled to the right of pre-emption, under the laws of the United States, to any of the lands granted to this State by the act of Congress of

Right of pre-emptors.

March 3d, 1857, to aid in the construction of said road, at the time when the line of said road was definitely fixed and permanently located, and who have heretofore occupied the same in good faith, and shall have continued in the occupancy thereof at the time when the company organizing under this act shall become entitled to the fee thereof, shall be at liberty to purchase the same of said company, if within six miles of the line of said road, for the sum of two dollars and fifty cents per acre, and if outside of said limits, for the sum of one dollar and twenty-five cents per acre: Provided, That application therefor, and proof of the right to purchase, shall be made within six months after the fee of said lands shall be acquired by said company as aforesaid.

When act to take effect.

SEC. 8. Be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved March 10, 1862.

Feb. 28, 1863.

An act to facilitate the construction of the Root River Valley and Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto.

Be it enacted by the legislature of the State of Minnesota:

Rights, benefits, property, &c., in whom vested.

SEC. 1. That all the rights, benefits, privileges, property, franchises, and interests of the Root River Valley and Southern Minnesota Railroad Company, acquired by the State of Minnesota, by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company hereinbefore done or suffered, or by reason of any forfeitures, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any part thereof, by the governor of the State of Minnesota, and bid in and purchased by the governor of the State of Minnesota, for the benefit of the State of Minnesota, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress, approved March 3, 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said roads or lines of the said Root River Valley and Southern Minnesota Railroad, are hereby disposed of and conferred to and upon the said Root River Valley and Southern Minnesota Railroad Company, subject to the provisions of the act of Congress aforesaid, be and the same are hereby held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act; and all the rights privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company, or Southern Min-

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Rights, benefits, and interests of said road, in whom vested.

nesota Railroad Company, by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22d, 1857, are hereby declared to be held in trust by the State of Minnesota, to be continued and granted to and vested in T. B. Stoddard, A. G. Chatfield, Charles See, Luke Miller, Hiram Walker, Augustus Haven, Thomas McRoberts, Parker Paine, Richard Chute, and Charles D. Sherwood, who are created a body corporate, under the name and style of the Root River Valley and Southern Minnesota Railroad Company, and their successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company had or might or could have by reason of the passage of the said acts, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act. For the purpose of carrying out and effecting the objects of this act, the Root River Valley and Southern Minnesota Railroad Company, and their successors and assigns, shall have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in this section, and be subject to all the conditions and provisions of the said act, excepting as altered or changed by this act.

Board of incorporators

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SEC. 2. The persons named as grantees in the first section of this act shall constitute a board of directors, a majority of whom shall be a quorum, who shall serve for one year, and until their successors are chosen and qualified. The board of directors of said company shall thereafter consist of seven persons, to be elected by the stockholders; but the number may be increased to nine members by a vote of said company. Elections for directors shall be held annually, at such time and place as may be fixed by the by-laws of said company. All vacancies may be filled by the remaining members of the board.

Who to constitute a board of directors.

SEC. 3. Any three of the board of directors are hereby authorized to call the first meeting by giving each of the other members of the board ten days' notice, through the post-office, of the time and place of meeting.

Who may call meetings of the board.

SEC. 4. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the title to the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of said Root River Valley and Southern Minnesota Railroad Company, until said company shall

When to acquire title to road-bed, right of way, &c.

fully complete and put in running order ten miles of said railroad; but said person or persons, or corporation, may have the privilege of entering into and upon said
590 railroad track, right of way, and depot-ground for the purpose of constructing said railroad, and may have the privilege of acquiring the right of way over the property owned by individuals in the same way as now specified in the charter of the Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company. And said company are hereby authorized and required to construct a railroad, with one or more tracks, from a point of junction with the Root River line, at or near Hokah, to the village of Brownsville, in the county of Houston, as provided in an act to execute the trusts created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory," approved May 22d, 1857, within one year after the road is completed from La Crescent, via Chatfield, to its junction with the Transit at Rochester, and said company or corporation are also hereby empowered and authorized to survey, locate, and complete, and perpetually to have, use, and maintain and operate the line of road from Mankato, via South Bend, to the southern boundary of the State, in the direction of the Big Sioux River; and upon the construction and completion of ten continuous miles of said road, commencing at La Crescent, with the running of cars thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand, and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to, under the provisions of the act of Congress hereinbefore referred to, approved March 3d, 1857, for the purpose of aiding in the construction of said road; and upon the construction and completion of each and every consecutive twenty miles of said railroad, then said governor of said State of Minnesota, acting for and in behalf of said State, shall execute in the name of the State of Minnesota, under the great seal thereof, a full and absolute title in fee-simple to all the lands appertaining thereto which were conveyed to the said State or Territory of Minnesota by an act of Congress passed March 3d, 1857, and entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sec-
591 tions, to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to the said Root River Valley and Southern Minnesota Railroad Company, or to which it would under any law of the Territory or State of Minnesota, or in any way or manner, be entitled; and upon the execution of said deed, the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

Duty of governor on completion of ten consecutive miles of road.

When to have absolute title to said lands.

SEC. 5. And be it further enacted, That the land granted or intended to be granted by the provisions of this act to this corporation, or to the persons herein named [or to the persons] who shall be the purchasers of said Southern Minnesota Railroad, and who shall finish and complete said railroad herein mentioned, shall be and are hereby exempted from all assessments and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company; and in consideration of an annual payment of a per centum (as provided in this section) by said said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation, which by the provisions of this act contained said corporation is to acquire, purchase, hold, possess, enjoy, or use for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments; and in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, during the first three years after said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation; and shall, during the seven years next ensuing, after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatsoever. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine under oath the officers and employees of said company, or other persons; and if any person so examined by the governor or other authorized persons shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company

When exempt from assessment and taxation.

Installments, when and how made.

Penalty for perjury.

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whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

When bonds to be delivered and transferred to said company.

SEC. 6. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete said railroad, *that* the governor of the State of Minnesota shall deliver, transfer, and assign to said company hereinbefore mentioned all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.

Rights, privileges, franchises, &c., upon what conditions to be assigned to said company.

SEC. 7. And be it further enacted, That the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned are so granted, transferred, and assigned upon this express condition, that the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, shall build and construct ten miles of said railroad within one year from the first day of January, 1863, and thirty miles of said road within two years from said first day of January, and fully build and construct and complete and fully equip said road from La Crescent, via Chatfield, to its junction with the Transit at Rochester, on 593 the present located line of said road, except so far as it may be necessary to change the same for engineering purposes, in coming up the Root River Valley, and in making a connection with the Transit , and from St. Paul and St. Anthony, via Minneapolis, to a point of junction at Shakopee, in the county of Scott, and thence on the present located line thereof to Mankato, within three years from the first day of January, 1863, and the whole of said line within ten years from the 3d day of March, 1857; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of said road.

Regulations for transportation of passengers and freight.

SEC. 8. That the said Root River Valley and Southern Minnesota Railroad shall transport, by all regular trains, all passengers and freights delivered to the same by every connecting line of railroad, now or hereafter to be constructed, on the same terms and at no greater rate than for the time being shall be charged for the same service to persons living on the line of said road: Provided, That any such connecting line shall be governed by the same rules in transporting passengers and freight, on their several lines, delivered by the said Root River Valley and Southern Minnesota Railroad.

May construct telegraph lines.

SEC. 9. The Root River Valley and Southern Minnesota Railroad may construct telegraphic lines upon its road, connecting with other telegraphic lines, and charge fees for transmitting messages thereon.

SEC. 10. That whenever the owner or occupant of any land through which said road shall pass, or adjoining the land of said road, shall enclose with a fence his or her lands, bounded in part by said road, said company shall construct and maintain its portion of the same in the same manner that individuals are or may be required by law to erect and maintain partition fences; and all fences erected on the line of said road by said company, or by the owners or occupants of lands along the line thereof, shall be considered partition fences, and be in all respects governed by the 594 laws in force regulating the same. Said company shall construct such necessary farm-crossings over the line of their said road as may be required by the owners of the land divided by said road. At any time after the expiration of ten years from and after the passage of this act, the legislature shall have full power to alter the provisions of this section, and to make such further and other rules and regulations respecting the construction and maintenance of farm and cattle guards by said company as they may deem best.

Construction of fences, how governed.

SEC. 11. All acts or parts of acts repugnant to or inconsistent with this act are hereby repealed.

Repeal of inconsistent acts.

SEC. 12. This act shall be in force from and after its passage.

When act to take effect.

Approved February 28, 1863.

March 4, 1864.

An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto.

Be it enacted by the legislature of the State of Minnesota:

CHAPTER I.

SECTION 1. That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company hereinbefore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any part thereof, by the governor of the State of Minnesota, and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, pertaining to the line of road from La Crescent up the Root River Valley to a point of junction with the Transit (now Winona and St. Peter) at Rochester, and also pertaining to the line of road and branches prescribed in an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and in the several acts amendatory thereof: Provided, That the branch mentioned in said act, running through the southern tier of counties, shall commence at or east of range ten; and all the lands, interest, rights, powers, and privileges granted to and con-

Rights, benefits, property, etc., in whom vested.

595 ferred upon the Territory of Minnesota, in and by virtue of an act of Congress approved March 3, A. D. 1857, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said road or line of the said Southern Minnesota Railroad, hereinbefore specified, are hereby disposed of and conferred to and upon the said Southern Minnesota Railroad Company, subject to the provisions of the act of Congress aforesaid, be, and the same are hereby, held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act; and all the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, by the several acts of the legislature of said Territory, the one entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2, A. D. 1855, and of the several acts amendatory thereof, and an act entitled "An act to execute the trust created by the act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State, and granting certain lands to railroad companies therein named,'" approved May 22, A. D. 1857, pertaining to the line of road from La Crescent, up the Root River Valley, to a point of junction with the Transit (now Winona and St. Peter) at Rochester, and pertaining to the line of roads and branches prescribed in said act of incorporation of the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, A. D. 1855, and the several acts amendatory thereof, are hereby granted and transferred to T. B. Stoddard, C. D. Sherwood, Luke Miller, Daniel Cameron, Clark W. Thompson, William D. Hurlbert, Hiram Walker, William Meighen, B. D. Sprague, H. W. Holley,

Rights, benefits, property, etc., in whom vested.

596 Thomas McRoberts, and William Morin, and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, had or might or could have by reason of the passage of the said act to said road or lands, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act. For the purpose of carrying out and effecting the objects of this act, the Southern Minnesota Railroad Company, and their successors and assigns, shall

have and be possessed of all the powers, immunities, rights, franchises, and privileges contained in and provided for in the said two acts referred to in this section, and be subject to all the conditions and provisions of the said act, excepting as altered or changed by this act.

Who to constitute a board of directors; elections to be held annually; vacancies, how filled.

SEC. 2. The persons named as grantees in the first section of this act shall constitute a board of directors, a majority of whom shall be a quorum, who shall serve for one year, and until their successors are chosen and qualified. The board of directors of said company shall thereafter consist of not more than fourteen nor less than nine persons, to be elected in accordance with the by-laws of said company. Elections for directors shall be held annually, at such time and place as may be fixed by the by-laws of said company, All vacancies may be filled by the remaining members of the board.

Who may call first meeting of the board.

SEC. 3. Any three of the board of directors are hereby authorized to call the first meeting by giving each of the other members of the board ten days' notice, through the post-office, of the time and place of meeting.

When to acquire title to road-bed, right of way, etc.

SEC. 4. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the title to the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of the said Southern Minnesota Railroad Company, until said company shall fully complete and put in running order ten miles of said railroad; but said person or persons, or corporation, may have the privilege of entering into and upon said railroad track, right of way, and depot-grounds for the purpose of constructing said railroad, and may have the privilege of acquiring the
597 right of way over the property owned by individuals, in the same way as now specified in the charter of the Root River Valley and Southern Minnesota Railroad Company, approved March 2, A. D. 1855. And said company are hereby authorized and required to construct a railroad, with one or more tracks, from a point of junction with the Root River line, at or near Hokah, to the village of Brownsville, in the county of Houston, as provided in an act to execute the trust created by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory," approved May 22, A. D. 1857, within one year after the road is completed from La Crescent, via Target Lake and Chatfield, to a point of junction with the Winona and St. Peter at Rochester. And upon the construction and completion of ten miles of said road, with the cars running thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to under the provisions of the act of Congress hereinbefore re-

ferred to, approved March 3, A. D. 1857, for the purpose of aiding in the construction of said road. And upon the construction and completion of each and every consecutive twenty miles of said railroad, the governor of said State of Minnesota, acting for and in behalf of said State, shall execute in the name of the State of Minnesota, under the great seal thereof, a full and absolute title in fee-simple to all the lands appertaining thereto, which were conveyed to the said State or Territory of Minnesota by an act of Congress passed March 3, A. D. 1857, and entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to the Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, or to which it would, under any law of the Territory or State of Minnesota, or in any way or manner, be entitled; and upon the execution of said deed, the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

Duty of governor on completion of every twenty consecutive miles.

598

SEC. 5. And be it further enacted, That the land granted or intended to be granted by the provisions of this act to this corporation, or to the persons herein named, [or to the persons,] who shall be the purchasers of said Southern Minnesota railroad, and who shall finish and complete said railroad herein mentioned, shall be, and are hereby, exempted from all assessments and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company; and in consideration of an annual payment of a per centum (as provided in this section) by said corporation as aforesaid, the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation which by the provisions of this act contained said corporation is to acquire, purchase, hold, possess, enjoy or use for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be, and hereby are, forever exempt from all taxation and from all assessments; and in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation; and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall from and after the expiration of ten years from the completion of

When exempt from assessment and taxation,

Installments, when and how made.

said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually as aforesaid shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be
599 furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law prescribed, to examine under oath the officers and employees of said company, or other persons; and if any person so examined by the governor or other authorized persons shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

Penalty for perjury.

When bonds to be cancelled.

SEC. 6. And be it further enacted, That whenever the said parties herein named, or said corporation herein mentioned, their successors or assigns, shall fully complete ten miles of said railroad, the governor of the State of Minnesota shall cancel all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.

Rights, privileges, etc., upon what conditions to be assigned to said company.

SEC. 7. And be it further enacted, That the rights, privileges, franchises, road-bed, right of way, properties, and immunities hereinbefore granted and assigned are so granted, transferred, and assigned upon this express condition, that the said Southern Minnesota Railroad Company shall build and construct ten miles of said road within two years from the 20th day of January, A. D. 1864, and thirty miles of said road within three years from said 20th day of January, A. D. 1864, and fully build, construct, and complete and fully equip said road from La Crescent up the Root River Valley, via Chatfield, to a junction with the Winona and St. Peter road at Rochester, on the present located line thereof, except so far as it may be necessary to change the same for engineering purposes, in coming up the valley of the Root River; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any
600 other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or ex-

tinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of said road: Provided, That the portion of the line of road commencing at Saint Paul and Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, thence to the southern boundary of the State, in the direction of the mouth of the Big Sioux, is hereby reserved by the State, with all the lands, property, franchises, and rights pertaining to the same, to vest in such corporation as may be authorized and empowered, under the laws of the State, to construct the same, or any part thereof.

Proviso.

Regulations for transportation of passengers and freight.

SEC. 8. That the said Southern Minnesota Railroad Company shall transport, by all regular trains, all passengers and freights delivered to the same, by every connecting line of railroad now or hereafter to be constructed, on the same terms and at no greater rate than for the time being shall be charged for the same service to persons living on the line of said road: Provided, That any such connecting line shall be governed by the same rules in transporting passengers and freight, on their several lines, delivered by the said Southern Minnesota Railroad.

May construct telegraph lines.

SEC. 9. The Southern Minnesota Railroad Company may construct telegraphic lines upon its road, connecting with other telegraphic lines, and charge fees for transmitting messages thereon.

All additional aid granted by Congress shall become vested in said company.

SEC. 10. And be it further enacted, That if at any time the Congress of the United States should make a further grant of lands to the State of Minnesota, for the purpose of making good the quantity of lands to which the said line of road was entitled under the act of Congress granting lands to the Territory (now State) of Minnesota, for railroad purposes, and which are now deficient, or should grant aid, in lands or otherwise, to aid in the construction of the line of road prescribed in said act of March 2, A. D. 1855, and the several acts amendatory thereof, or any of its branch railroads provided for in this act, all such lands or aid so granted to the State are hereby pledged, granted to, and shall become vested in the Southern Minnesota Railroad Company, to be disposed of for the benefit of said company, according to the provisions of such act of Congress.

May issue stock.

SEC. 11. And be it further enacted, That the Southern Minnesota Railroad Company shall have power to create and issue, in such manner and on such terms as it may deem expedient, special stock on any part of said railroad or branches, and to make such agreements as it may deem proper, with the holders of any such special stock, for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire, to the payment of dividends on such special stock as may be issued in respect thereto; which appropriation, as made by such agreement, shall be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided against any future act of the company, or any of its general liabilities. And the said company may make such agreements as it may deem proper with the holders of any such special stock

as to the administration of the portion of said railroad, and the land-grant appertaining thereto, to which said stock may pertain, and for the separate organization of the holders of such special stock for the purpose of that administration, and enabling them, or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain all the powers of the company, subject to the provisions of such agreement when made and entered into.

May consolidate its line of road.

SEC. 12. Be it further enacted, That the Southern Minnesota Railroad Company may consolidate the whole or any portion of its line of road or branches, and all the property, rights, powers, franchises, grants, and effects pertaining to such line or branch railroad, with the rights, powers, franchises, grants, and effects of any other railroad company, either within or without this State, upon such terms and conditions as such company or a majority of the directors of such respective companies may respectively agree; and the railroad company in which such division-line or branch railroad shall become vested by such consolidation shall thereafter hold and enjoy all rights, grants, powers, and franchises in respect to such line or branch which the company possessed before the consolidation; but said Root River Valley and Southern Minnesota Railroad Company shall remain vested with all its other rights, powers, privileges, and franchises.

Repeal of former act.

SEC. 13. That section twelve of an act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, be, and the same is hereby, repealed.

602

Shall construct cattle-guards and fences.

SEC. 14. That said company shall construct and maintain all proper and necessary cattle-guards and farm-crossings over the line of said road, and also within two years after the completion of their road through any improved land, shall build, keep, and maintain a legal fence on each side of their road, through such improved land.

Repeal of inconsistent acts.

SEC. 15. All acts or parts of acts repugnant to or inconsistent with this chapter are hereby repealed.

When act to take effect.

SEC. 16. This chapter one of this act shall take effect and be in force from and after the passage of this act.

CHAPTER II.

Rights, benefits, property, etc.; in whom vested.

SECTION 1. That all the rights, benefits, privileges, property, franchise, and interests of the Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company hereinbefore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any part thereof, by the governor of the State of Minnesota, and bid in and purchased by the governor of the State of Minnesota for the benefit of the State of Minnesota, pertaining to the line of road from Saint Paul, and from Saint Anthony via Minneapolis to a point of junction

at Shakopee City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Sueur, Traverse de' Sioux, Saint Peter, Kasota, Mankato, and South Bend, to the southern boundary of the Territory, in the direction of the Big Sioux River, and all the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an act of Congress approved March 3d, A. D. 1857, pertaining to said line of road, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," are hereby granted, vested in, and transferred as follows, to wit: All the rights, immunities, benefits, privileges,
603 franchises, lands, interests, and property aforesaid, appertaining, relating, or applicable to that portion of said road last aforesaid, to Horace Thompson, D. W. Ingersoll, S. W. Farnham, Andrew G. Chatfield, Isaac Lincoln, F. A. Donahower, John J. Porter, P. Berkey, H. C. Smith, John L. Merriam, F. R. E. Cornell, E. W. Cutter, Eli B. Ames, J. S. Letford, William Huey, B. R. Laird, and Isaac Marks, their associates and successors, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act, which said persons, their associates and successors, shall be known by the name of the Minnesota Valley Railroad Company, and by that name may sue and be sued, and have and exercise all the powers, rights, and privileges appertaining to that portion of the road last hereinbefore designated which heretofore pertained to the said Southern Minnesota Railroad Company; and the persons above named shall be directors of the said Minnesota Valley Railroad Company for one year, and until others are appointed or elected in their places, and may adopt and use a common seal.

Who may call first meeting of the board.

Any three of the board of directors of said company are hereby authorized to call the first meeting by giving each of the other members of the board ten days' notice, through the post-office, of the time and place of meeting.

Who to constitute a board of directors.

The board of directors of the said Minnesota Valley Railroad Company shall consist of seventeen persons, a majority of whom shall be a quorum, who shall have power to fill vacancies, and whose powers and duties shall commence immediately after the passage of this act. They may be residents of any State in the Union, and may be reduced to nine by a vote of the stockholders. They may hold meetings at such time and place, either within or out of the State, as they may elect.

When to acquire title to road-bed, right of way, etc.

SEC. 2. And be it further enacted, That it is hereby made a condition of the grants herein made, that said person or persons, or corporation, shall not acquire the title to the road-beds, right of way, depot-grounds, culverts, bridges, turn-outs, switches, rights, privileges, and franchises, and the track and line of the said Minnesota Valley Railroad Company, until said company shall fully complete and put

in running order ten miles of said railroad; but said person or persons may have the privilege of entering into
604 and upon said railroad track, right of way, and depot-ground for the purpose of constructing said railroad, and may have the privilege of acquiring the right of way over the property owned by individuals, in the same way as now specified in the charter of the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, A. D. 1855, as provided in the act of May 22, A. D. 1857. And upon the construction and completion of ten miles of said road, with the cars running thereon, the governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand and be entitled to receive from said governor, in the name of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to under the provisions of the act of Congress hereinbefore referred to, approved March 3, A. D. 1857, for the purpose of aiding in the construction of said road. And upon the construction and completion of each and every consecutive twenty miles of said railroad, the governor of said State of Minnesota, acting for and in behalf of said State, shall execute in the name of the State of Minnesota, under the great seal thereof, a full and absolute title in fee-simple to all the lands appertaining thereto which were conveyed to the said State or Territory of Minnesota by an act of Congress passed March 3, A. D. 1857, and entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," and which would have accrued to the Root River Valley and Southern Minnesota Railroad Company, applicable to the said Minnesota Valley Railroad, or to which it would, under any law of the Territory or State of Minnesota, or in any way or manner, be entitled; and upon the execution of said deed, the said company, or the said person or persons, shall have the absolute, full, and complete title to the said lands in fee-simple.

Duty of governor on completion of every twenty consecutive miles.

And further provided, That said company shall construct and maintain all proper and necessary cattle-guards and farm-crossings over the line of said road, and also, within two years after the completion of their road through any improved land, shall build, keep, and maintain a legal fence on each side of their road through such improved land.

Shall construct cattle-guards and fences.

605 SEC. 3. And be it further enacted, That the lands granted or intended to be granted by the provisions of this act shall be and are hereby exempted from all assessments, and from all taxation whatsoever, until the same shall have been sold and conveyed by the said company; and in consideration of an annual payment of a per centum (as provided in this section) by said company, the said railroad and its appurtenances and appendages, and all other property, estate, and effects of said company, and also the stock and capital of said company, shall be and hereby are

When exempt from assessment and taxation.

forever exempt from all taxation and from all assessments; and in consideration of the grants made to and the privileges and franchises conferred upon the said company, and of the exemption contained in this section, the said company shall, during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March in each and every year, pay into the treasury of the State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after thirty miles of the said railroad shall be completed and in operation; and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of said seven years, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroads; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earnings aforesaid an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law, to examine under oath the officers and employees of said company, or other persons; and if any persons so examined by the governor, or other authorized person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

Installments, when and how made.

Penalty for perjury.

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When bonds to be cancelled.

SEC. 4. And be it further enacted, That whenever the said company herein named, its successors or assigns, shall fully complete ten miles of said railroad, *that* the governor of the State of Minnesota shall cancel all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.

Rights, privileges, etc.; upon what conditions to be assigned to said company.

SEC. 5. And be it further enacted, That the rights, privileges, franchises, road-beds, right of way, properties, and immunities hereinbefore granted and assigned are so granted, transferred, and assigned upon this express condition, that the said Minnesota Valley Railroad Company shall construct ten miles of its said road within two years from the twentieth day of January, A. D. 1864, and thirty miles

of its said road within three years from said twentieth day of January, and construct and fully equip said road, and all the other portions of said road, on the present located line thereof, except so far as it may be necessary to alter the same for engineering purposes, [Provided, That said road shall not be diverted from any of the points hereinbefore named,] within eight years from the third day of March, A. D. 1864; and upon the failure to keep and perform either or any of the conditions in this section contained, all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character she now holds them, without any merger or extinguishment, to be used, granted, and disposed of for the purpose of aiding the construction of said road.

Proviso.

Regulations for transportation of passengers and freight.

SEC. 6. That the said railroad company shall transport, by all regular trains, all passengers and freights delivered to the same by every connecting line of railroad now or hereafter to be constructed, on the same terms and at no greater rate than for the time being shall be charged
607 for the same service to persons living on the line of said road: Provided, That any such connecting line shall be governed by the same rules in transporting passengers and freight, on their several lines, delivered by the said Minnesota Valley Railroad Company.

May construct telegraph-lines.

SEC. 7. The said railroad company may construct telegraph-lines upon its road connecting with other telegraphic lines, and charge fees for transmitting messages thereon.

All additional aid granted by Congress shall become vested in said company.

SEC. 8. And be it further enacted, That if at any time the Congress of the United States should grant aid in lands or otherwise to aid in the construction of the railroad provided for in this chapter, all such lands or aid so granted to the State are hereby pledged, granted to, and shall become vested in the aforesaid Minnesota Valley Railroad Company.

May issue stock.

SEC. 9. And be it further enacted, That the Minnesota Valley Railroad Company herein named may issue two millions five hundred thousand dollars of stock, with privilege of increasing the same to five millions, and shall have power to create and issue in such manner and on such terms as it may deem expedient one or more classes of preferred stock, or special stock, and to make such agreements as it may deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroads which it may construct or otherwise acquire, to the payments of dividends on such special stock as may be issued in respect thereto, which appropriations, as made by such agreement, shall be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement may be provided against any future act of said company, or any of its general liabilities. And the said company may make such arrangements as it may deem proper with the holders of any such special stock as to the administration of the portion of said rail-

road and the land-grant appertaining thereto to which said stock may pertain, and for the separate organization of the holders of such special stock for the purpose of that administration, and enabling them, or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain all the powers of the company, subject to the provisions of such agreement when made and entered into. The grants made in this act are upon
608 the express condition that the grantees named in chapters one and two, by accepting their respective grants, thereby ratify and confirm the same as made in this act.

Repeal of inconsistent acts.

SEC. 10. All acts or parts of acts repugnant to or inconsistent with this chapter are hereby repealed.

When act to take effect.

SEC. 11. This act shall be in force from and after its passage.

Approved March 4, 1864.

March 1, 1870.

609 An act relating to the Saint Paul and Sioux City Railroad Company.

Be it enacted by the legislature of the State of Minnesota:

Change of name of said road approved; confirmation of acts done; repeal of inconsistent acts.

SECTION 1. That the Minnesota Valley Railroad Company having by a resolution of its board of directors determined to change the name of said company to that of the Saint Paul and Sioux City Railroad Company, as provided by section four of the act to authorize the Minnesota Valley Railroad Company to construct a branch from Mankato, or some point near thereto, to the south line of Faribault County, is hereby approved, and all lawful acts done by said company under said new name are hereby confirmed, and said company by the name so assumed is continued, and may transport passengers and freight for hire, and generally operate their road, and with succession perpetually enjoy all the rights and privileges heretofore or hereafter conferred by law, and all parts of acts inconsistent with this act are hereby repealed.

SEC. 2. That so much of the act entitled "An act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March second, one thousand eight hundred and fifty-five, and any acts amend-
610 atory thereto, as confers on the Saint Paul and Sioux City Railroad Company the right to take private property for any of the purposes of said company, and so far as the same provides for the manner and proceedings for taking the same, are hereby repealed, saving all rights heretofore acquired, and continuing the rights of all parties having proceedings pending under the acts or parts of acts hereby repealed.

Repeal of former act conditionally.

SEC. 3. That in lieu of the acts and provisions repealed by the preceding section of this act, said Saint Paul and Sioux City Railroad Company shall hereafter have the right and authority to acquire and hold right of way, depot-grounds, and all other privileges, in all respects as provided by the thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first,

May acquire and hold right of way, &c.; how private property may be taken.

twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, and twenty-seventh sections of chapter thirty-four, title one, relating to corporations, of the revised statutes of Minnesota, now in force: Provided, That all proceedings on the part of said company to condemn private property for the uses of its railroad shall be taken in, and the commissioners to be appointed shall be residents of the county where such property is situated, or the county to which such county is attached for judicial purposes.

SEC. 4. That section fourteen of said act incorporating the Root River Valley and Southern Minnesota Railroad Company, approved March second, one thousand eight hundred and fifty-five, is hereby repealed, and said company shall have authority to require employees to wear such badge or uniform as the superintendent or directors may think proper. That the Saint Paul and Sioux City Railroad Company may locate, construct, and build its branch line authorized by the act of the legislature of the State of Minnesota, approved March sixth, one thousand eight hundred and sixty-seven, from a point on its main line at Mankato, to the south line of the State, on such route as the company may determine, and all provisions of said last-named act conflicting herewith are repealed.

Employees to wear badges; to determine route of branch line.

SEC. 5. That the act authorizing said company to construct a branch line from some point on its main line at or south of Henderson is hereby amended so as to authorize said company, for the purpose of constructing and operating said branch road, to create and issue general or common stock, and special and preferred stock, applicable to such branch road, in such manner and with such provisions for security, dividends, and management of said road as may as agreed upon with the holders of, or provided prior to the issue of such stock, and such branch may be owned, managed, and operated as a distinct interest from the main line, and the debts and liabilities of the branch line shall not be a lien or liability of or upon the main line, nor shall the debts or liabilities of the main line be a lien or liability upon the branch line; and all laws and the charter now or hereafter in force relating to the said St. Paul and Sioux City Railroad Company shall, as far applicable, apply to and govern the branch lines of said road.

To issue stock, for what purpose; debts of branch not to be a lien on main line.

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SEC. 6. That whenever the St. Paul and Sioux City Railroad Company shall hereafter or shall have heretofore found it necessary or convenient to unite with any other railroad company in the joint construction, purchase, or use of any bridge, right of way, depot-grounds, tracks, or other railroad property, it shall be lawful for them to agree upon the terms of said purchase, joint use, or ownership, or said company may hire or lease such portion of its road to any other railroad company, or may hire or lease to any other railroad company, so much of their respective roads as they may think proper, on such terms and for such time and rental as may be agreed upon, and in all cases of joint ownership, use, or lease of any road or part thereof, the company using such road, and whose trains or acts cause injury to any person or property, shall be held liable therefor; and any agreement made for that purpose may define the rights of

When bridges, &c., may become joint stock; may be repealed at any time.

the respective parties, and when duly filed or recorded in the office of the secretary of state, shall be notice to all persons, and copies of such agreement duly authenticated shall be evidence in all courts and places: Provided, That the legislature may amend or repeal this section at any time, saving all rights accrued or accruing, and continuing the rights of all parties having proceedings pending under or by virtue of said section at the date of its amendment or repeal.

To file certificate; what to contain.

SEC. 7. The St. Paul and Sioux City Railroad Company shall file with the secretary of state a certificate, signed by its president and secretary, setting forth the date of such change of names and the acceptance by said company of the provisions of this act.

When act to take effect.

SEC. 8. This act shall be in force from and after its passage.

Approved March 1, 1870.

March 4, 1870.

612 An act to dispose of the five hundred thousand acres of internal-improvement lands.

Be it enacted by the legislature of the State of Minnesota:

Land and proceeds set apart as a separate fund.

SECTION 1. The 500,000 acres of land which the State has received, or which it shall hereafter receive, under the eighth section of the act of Congress approved September four, one thousand eight hundred and forty-one, and the proceeds thereof, are hereby set apart as a separate fund, to be denominated the "State internal-improvement fund," and said lands shall be disposed of only in the manner following:

Commissioner to publish notice; what notice to contain.

SEC. 2. The commissioner of the State land-office shall cause a notice to be published in two daily newspapers in St. Paul, and in a daily newspaper in each of the cities of Chicago, Milwaukee, New York, Boston, Hartford, and Philadelphia, containing a general description of the location and character of said lands, and that the same will be offered at public auction, at the capitol, in the city of St. Paul, on the first Wednesday in September, one thousand eight hundred and seventy, and on the following days, until they shall all have been offered.

How lands to be disposed of; price per acre.

SEC. 3. * If on or before the day appointed in such notice there shall be deposited with said commissioner not less than two thousand Minnesota State railroad-bonds, with all unpaid coupons attached, with a written contract on part of the owner thereof, agreeing to purchase said land under this act to the extent of the bonds so deposited, and in case of failure to purchase said lands, authorizing the said commissioner to select and set apart for said depositor, from the lands remaining unsold, which at the minimum price shall equal the amount of said bonds so deposited, with the interest thereon, then and in that case said commissioner shall proceed on the day named in said notice, and following days, at his office, to offer at public sale the said lands in tracts of one hundred and sixty acres or smaller government

*The requisite number of bonds required in section 3 were never deposited

subdivisions, and shall sell the same to the highest bidder, but in no case for less than eight dollars and seventy cents per acre. After all of said lands shall have been so offered at public sale, and any remain unsold, said commissioner is authorized to sell said remaining lands at private sale, on the terms herein stated, at said minimum price of
613 eight dollars and seventy cents per acre, with interest on said price from the commencement of said public sale. If the holders or owners of the bonds, judgments, or claims so deposited with the commissioner do not purchase land at said public sale to the amount of said deposits, and do not within thirty days after the close of said public sale come in and purchase at private sale to the amount of such deposit, or to the extent of the said lands remaining unsold, then and in that case said commissioner shall select and set apart for said depositors, respectively, from the lands remaining unsold, and amount thereof which at said minimum price shall equal the amount of said bonds, judgments, and claims so deposited, with the interest thereon, and shall issue certificates thereof to said parties respectively, and shall retain as payment the said bonds, judgments, and claims so deposited, the same as if said parties had purchased at public or private sale.

What may be received in payment of lands.

SEC. 4. In payment of said lands at such sale, the commissioner shall receive lawful money of the United States, Minnesota State railroad bonds, with all unpaid coupons attached, and the judgment legally transferred to the estate of McDonald & Graham, and Fitz, Grindall & Keepers, mentioned and referred to in chapter one hundred and fifty-two, on page three hundred and eighty-eight of the special laws of one thousand eight hundred and sixty-seven, with the accrued interest thereon, for the construction of road-bed of the St. Paul and Pacific Railroad in one thousand eight hundred and fifty-eight and one thousand eight hundred and fifty-nine, for which no State railroad-bonds were issued: Provided, however, That no interest shall be computed or allowed on the interest or coupons of said bonds or claims: And provided further, That the unmatured coupons of said bonds shall be surrendered with the bonds.

Bonds taken for lands to be cancelled.

SEC. 5. All Minnesota State railroad-bonds received in payment of said lands shall be cancelled by the State treasurer, and never again be re-issued.

Duty of commissioner; duty of governor.

SEC. 6. The commissioner shall execute and deliver to each purchaser a certificate, describing the lands purchased by him, and stating that the holder, his heirs, assigns, and devisees, shall be entitled to receive a deed of said lands upon demand, to be made within five years from the date of such certificate; and upon such demand the governor is authorized and directed to execute to the holders of
614 such certificates a deed or deeds of any part or of the whole of the lands described in such certificates.

Lands to be exempt from taxes for ten years.

SEC. 7. In consideration of the purchase of said lands at or above the minimum price herein established, said lands shall be exempt from taxation for the period of ten years from and after said sale.

To be submitted to the people, when; ballots, how prepared; election, how conducted.

SEC. 8. This act shall be submitted to the electors of this State, for their approval or rejection, at a special election to be held on the last Tuesday in May, one thousand eight hundred and seventy. The ballots at such election upon the question submitted shall have written or printed thereon as follows: Those in favor of this act, "Payment of bonds with lands—Yes;" those against the act, "Payment of bonds with lands—No." The polls at said election shall be opened during the time, and said election conducted and the returns thereof made and certified in the manner, now provided by law for casting, canvassing, and returning votes for State officers, except that said returns shall be made to the secretary of state within thirty days after said election, and within ten days thereafter the secretary of state, in connection with the governor and State auditor, shall canvass the returns so made, and if it shall be found that a majority of those voting at said election have approved of this act, then the governor shall issue his proclamation declaring said result, and thereupon this act shall take effect and be in force.

Not to bind the State for greater obligation than existed prior to this act.

SEC. 9. Nothing contained in this act shall be so construed as to have the effect of an acknowledgment on the part of the State of any or greater obligations of any kind that did not exist prior to its passage.

When act to take effect.

SEC. 10. This act shall take effect and be in force from and after its passage.*

Approved March 4, 1870.

March 4, 1870.

An act to provide for the holding of a special election.

Be it enacted by the legislature of the State of Minnesota:

Special election; for what purpose; when held.

SECTION 1. A special election is hereby ordered to be held on the last Tuesday of May, one thousand eight hundred and seventy, in all the election-districts of this State, to vote upon the proposition for the adjustment of the 615 Minnesota State railroad-bonds, with the "Internal-improvement lands," as provided by a law passed at this session. Said election shall be conducted and notice thereof given in all respects as is now provided by law for holding State elections for the election of State officers.

When act to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 4, 1870.

March 6, 1871.

An act to test the validity and provide for the equitable adjustment of certain State railroad bonds.

Whereas by an act of the legislature of the State of Minnesota, approved on the 4th day of March, A. D. one thousand eight hundred and seventy, and submitted to and ratified by a majority of the electors of the State, an opportunity was offered to the holders of the Minnesota State railroad bonds to exchange the same for the five hundred

* Adopted by following vote: Yes, 18,257; no, 12,489.

thousand acres of internal-improvement lands held by this State; and

Whereas under and pursuant to the terms of said act, Selah Chamberlain and others deposited certain of said bonds with the State auditor, and by reason of the refusal of other holders of said bonds to deposit the same under said act, the aforesaid owners of said bonds are unable to obtain payment of said bonds, so deposited, out of said lands; and

Whereas doubts prevail as to whether said bonds constitute a legal and valid indebtedness against the State, or, if so, to what extent or amount:

Now, therefore, to determine the validity of said bonds, and the amount justly and equitaby due thereon from the State, and to provide for the equitable abjustment of the amount so found to be due—

Be it enacted by the legislature of the State of Minnesota:

Board of commissioners appointed; for what purpose; when result to be filed.

SECTION 1. The governor shall appoint three disinterested persons learned in the law, either residents or non-residents of the State, who shall be sworn to impartially perform their duties under this act, and shall constitute a board of commissioners, and who are hereby authorized and directed to determine and adjudge whether the State railroad bonds deposited with the State auditor, under and pursuant to the aforesaid act of the legislature, are a legal and equitable obligation against the State, and, if so, to ascertain and award the amount due upon such bonds, 616 upon the basis of the cost of such bonds to the depositers thereof, with interest upon such cost at the rate of seven per cent. per annum annually, and to file their determination and award with the governor before the first day of July, A. D. one thousand eight hundred and seventy-one.

Power of board; duty of attorney-general; rules governing board; time of meeting, how determined; compliance with requirements of act.

SEC. 2. The said commissioners shall have power to issue subpœnas and require and compel the attendance of witnesses, to administer oaths, and shall possess all the powers of judges or referees in judicial actions or proceedings. Upon the examination and hearing, the said owners of said bonds may appear in person or by attorney, and the attorney-general shall appear and conduct the proceedings on the part of the State, and shall produce all evidence necessary to show all the equities existing between the State and the holders of such bonds. The said hearing and proceedings shall be conducted, so far as the same can be applied, according to the rules and practice of the district courts and of the supreme court in the trial and hearing of actions or proceedings at law and equity; and the said commissioners shall prescribe and determine the times, places, and manner of said examinations and hearing; the decision and award of a majority of said commissioners shall be deemed a compliance with the requirements of this act.

When old bonds to be destroyed and new ones issued; denomination of; when payable; rate of interest; other duties.

SEC. 3. In case the said commissioners shall decide that said bonds constitute a legal obligation against the State, and shall award the amount thereof upon the basis aforesaid, they shall compute the interest thereon to the 1st day of July, A. D. one thousand eight hundred and seventy-one, and thereupon, and upon the surrender of said bonds to the governor to be cancelled, the governor shall issue and deliver the bonds of the State, under the State seal, and in the form in which State bonds have been heretofore issued, for the amount or amounts so awarded, with coupons for the interest to accrue thereon. Said bonds shall be in denominations of five thousand and one thousand dollars, and shall bear date July first, A. D. one thousand eight hundred and seventy-one, and shall be payable thirty years from date, with interest payable semi-annually, in the city of New York, at the rate of two per cent. per annum for the first year, which interest shall be funded as a part of the principal; at the rate of three per cent. per annum for the second year; at the rate of four per cent. per annum for the third year; at the rate of five per cent. per annum for the fourth year; at the rate of six per cent. per annum for the fifth year, and at the rate of seven per cent. per annum for the residue of the time of said bonds; the difference between the aforesaid rates of interest and the amount of interest at seven per cent. for the first six years shall be added to the aggregate amount of the principal of said bonds as awarded. Said commissioners shall also compute and make report of the amount due upon the judgments referred to in chapter one hundred and fifty-two of the special laws of one thousand eight hundred and sixty-seven, and the governor shall thereupon issue like bonds for such amount in settlement and satisfaction thereof.

617

Liquidation of principal and interest.

SEC. 4. All moneys which shall be paid into the State treasury from and after July first, A. D. one thousand eight hundred and seventy-one, by any railroad company for or in lieu of taxes on the property or business of said railroad, shall be appropriated to the payment of the interest on said bonds so to be issued, and the residue thereof, if any, shall be invested in such manner as other sinking-funds are invested, and shall constitute a sinking-fund for the extinguishment of the principal of such bonds; and no taxes shall be levied to pay the interest on said bonds beyond the revenue to be derived from such railroad taxes, and the rate of said railroad taxes shall not be reduced until the final payment of such bonds.

Compensation; may employ a secretary; duties of; amount appropriated.

SEC. 5. Said commissioners shall be entitled to a compensation of eight dollars per day for the time actually employed under the provisions of this act, and may appoint and employ a secretary, who shall keep a true record of all their proceedings, and be entitled to receive the sum of five dollars per day for his services while actually employed; and the sum of two thousand five hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appro-

priated, for the payment of per diem, traveling, and other expenses authorized by this act.

Submitted to vote of people; when election to be held; ballots, how prepared; returns, how made.

SEC. 6. This act shall be submitted to the electors of this State for their approval or rejection at a special election to be held on the first Tuesday in May, one thousand eight hundred and seventy-one. The ballots at such election upon the question submitted shall have written or printed thereon as follows: Those in favor of this act, "For arbitration on Minnesota State railroad bonds—Yes;" those against the act, "For arbitration on Minnesota State railroad
618 bonds—No." Said election shall be conducted in the same manner now provided by law for casting, canvassing, and returning votes for State officers, except that said returns shall be made to the secretary of state within thirty days after said election, and within ten days thereafter the secretary of state, in connection with the governor and State auditor, shall canvass the returns so made, and if it shall be found that a majority of those voting at said election have approved of this act, then the governor shall issue his proclamation declaring the result, and thereupon this act shall take effect and be in force.

When act to take effect.

SEC 7. This act shall take effect and be in force from and after its passage.*

Approved March 6, 1871.

619 And afterwards, to wit, at a stated term of said court, begun and held at the city of Saint Paul, in said district, on the third Monday, being the 16th day of June, A. D. 1873, and on the 28th day of June, A. D. 1873, the following proceeding, among others, was had, to wit:

SELAH CHAMBERLAIN
vs.
THE SOUTHERN MINNESOTA RAILROAD COMpany et al.

This cause, coming on to be heard, was argued orally by counsel, Messrs. Gordon E. Cole, F. R. E. Cornell, for the plaintiff, Messrs. John M. Gillman, James Gilfillan, E. C. Palmer, and H. J. Horn for the defendants, and the cause was submitted to the court, the parties to have leave to file written or printed briefs, as follows: the plaintiff within five days, the defendant within twenty days thereafter, and the plaintiff to have fifteen days thereafter within which to reply to defendants' briefs; whereupon all the papers are to be transmitted to the circuit judge.

And afterwards, to wit, at a stated term of said court, began and held at the city of Saint Paul, in said district, on the second Monday, being the 8th day of December, A. D. 1873, and on the 13th day of January, 1874, the following proceeding, among others, was had, to wit:

620 SELAH CHAMBERLAIN
vs.
THE SAINT PAUL & SIOUX CITY RAILROAD Company, the Southern Minnesota Railroad Company, Albon P. Man, Samuel B. Ruggles, William R. Marshall, Charles Scheffer, Thomas A. Scott, Horace D. Hull, George J. Seney, and John A. Stewart.

This cause was submitted to the court at its last term upon the plead-

* Defeated by the following vote: Yes, 9,293; no, 21,499.

ings, exhibits, an' agreed statement of facts, signed by the counsel of the respective parties, and the proofs. Upon consideration thereof, it is now ordered, adjudged, and decreed that the plaintiff's bill be, and the same is hereby, dismissed at his costs, for the reasons stated in the opinion filed herein; and the plaintiff thereupon excepts, and prays an appeal from said decree, which is allowed, and the penalty of the supersedeas bond fixed at the sum of five hundred dollars.

His honor Judge Nelson did not sit in the case.

And at the same time the opinion of the court was filed; which opinion is in writing, and in the words and figures following, viz:

621 District of Minnesota, United States circuit court. December term, 1873.

SELAH CHAMBERLAIN, PLAINTIFF,
vs.
ST. PAUL & SIOUX CITY R. R. CO., THE SOUTHern Minnesota R. R. Co., Samuel B. Ruggles, Albon P. Man, Charles Scheffer, William R. Marshall, Thomas A. Scott, Horace D. Hull, George J. Seeney, and John A. Stewart, defendants.

1. The present railroad companies, to which the land-grant of Congress was regranted on the failure of the old companies (upon which the benefit of the grant was first conferred) to build the roads, do not hold any of the said lands, not even the first 120 sections, subject to any trust in favor of the creditors of the State or of the former companies.

2. Power of the State over the disposition of the railroad-aid land-grant considered.

622 3. Minnesota State railroad-aid bonds, issued under the amendment to the State constitution of April 15, 1858, held valid.

4. Construction of said constitutional amendment, and the nature of the remedies by foreclosure, and forfeiture, considered.

Before Dillon, circuit judge.

Land-grant to railroads. Minnesota State bonds.

On the 3d day of March, 1857, Congress granted to the Territory of Minnesota lands to aid in the construction of certain lines of railroad therein. (11 Stats. at Large, 195.) By the act it is provided, inter alia, that "the lands hereby granted for and on account of said road and branches severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatsoever."

Section 4 enacts "that the lands hereby granted * * *
623 shall be disposed of by said State only in the manner following, that is to say: that a quantity of land, not exceeding one hundred and twenty sections for each of said roads and branches, * * * may be sold; and when the governor shall certify * * * that any twenty continuous miles of any of said road, &c., is completed, then another quantity of land, not to exceed one hundred and twenty sections * * * for each of said roads, * * * may be sold," and so on.

The territorial legislature of Minnesota passed an act, approved May 22d, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act,'" &c., and by chapter 3 of said act the Root River Valley & Southern Minnesota R. R. Co., a corporation created and then existing under the laws of said Territory, (the name of which corporation was soon after changed to the "Southern Minnesota R. R. Co.,") was authorized to construct two of the lines of said road mentioned in the said act of Congress, being the lines since severally constructed by the two companies defendants in this action; that by sections 3, 7, and 12 of said chapter 3 of said territorial act, it was provided
624 that said railroad company, upon the construction of said lines of road, as in said act and the act of Congress provided, should have the lands to aid in the construction thereof, in and by said act of Congress designated.

On the 15th day of April, 1868, an amendment to the constitution of the State was adopted by the people, authorizing the issue of State bonds not to exceed $5,000,000 to the land-grant railroads, "for the purpose of expediting the construction thereof." By this amendment the provision was that State bonds to the amount of $100,000 should be issued to each company for every ten miles of road made "ready for placing the superstructure thereon," and $100,000 for each ten miles completed with cars running thereon. "Said bonds thus issued shall be denominated 'Minnesota State railroad bonds,' and the faith and credit of the State are hereby pledged for the payment of the interest and the redemption of the principal thereof." By this amendment, also, the State bonds were to be made payable to the order of the company to which they were issued, and transferable by the indorsement of the president thereof. Then follows this provision:
625 "Each company shall make provision for the punctual payment and redemption of all bonds issued and delivered to it, and for the punctual payment of the interest which shall accrue thereon in such manner as to exonerate the treasury of this State from any advances of money for that purpose, and as security therefor the governor shall demand and receive from each of said companies, before any of said bonds are issued, an instrument pledging the net profits of the road for the payment of said interest, and a conveyance to the State of the first 240 sections of land, free from prior incumbrances, which said company is or may be authorized to sell in trust for the better security of the treasury of the State from loss on said bonds," &c. And by the said constitutional amendment it was also provided that, as a further security, each company should transfer to the State its own first-mortgage bonds, corresponding in amount to the said State bonds so issued to such company; and in case of default of such company to pay *to pay* the interest on the State bonds so issued to it, the governor was authorized, in such manner as should be provided by law, to sell
626 the said first-mortgage bonds of such company so transferred to the State, or require a foreclosure of the mortgage executed by said company to secure the same.

And it was further provided, that in consideration of the loan of the State credit to such companies, and as a condition thereof, each company should complete not less than fifty miles of its road on or before the 31st of December, 1861, and not less than 100 miles before the year 1864, and four-fifths of the entire line before the year 1866; and any failure so to complete within the said several times, should forfeit to the State all the right, title, and interest, of any kind whatsoever, in and

to any lands, together with the franchises connected with the same, pertaining to the portion of the road so uncompleted.

Said proposed amendment was submitted to the people for approval, at a special election held April 15th, 1858, and was approved by a vote of about six to one. But said proposed amendment was not submitted to Congress or referred to in the act admitting Minnesota as a State.

627 The said Root River Valley and Southern M. R. R. Co. accepted the provisions of said amendment.

In October, 1858, the Southern Minnesota R. R. Co. (being the new name for the Root River Valley & Southern Minnesota R. R. Co.) executed to the State an instrument pledging the net profits of the road for the payment of the interest on the State bonds that should be issued to it, and also a conveyance of the first 240 sections of land which it was or might be authorized to sell, for the better security of the State against the payment of interest on the State bonds so to be issued to the said company; and on October 1, 1868, the company made a trust-deed to Pringle and Chatfield, trustees, on the road, lands, franchises, and property of every description, to secure $2,000,000 of the bonds of the company.

In July, 1857, the route of the Southern Minnesota R. R. Co. was located.

In 1858 and early in 1859 the plaintiff constructed road-bed, and received therefor from the companies State bonds indorsed by the companies, to the amount of $575,000. In 1859 the railroad company

628 became insolvent and never completed a mile of road, nor did anything beyond the grading, and made default in the payment of interest on its bonds and on the bonds of the State.

In 1860 the constitution was amended, by "expunging" the amendment of April 15, 1858, under which the State bonds were issued, "saving to the State all rights, remedies, and forfeitures accruing under said amendment;" and by providing that "no law levying a tax, or making other provision for the payment of interest or principal of the bonds denominated 'Minnesota State railroad bonds,' shall take effect or be in force until such law shall have been submitted to a vote of the people of the State, and adopted by a majority of the electors of the State voting upon the same."

By an act of the legislature of the State of August 12, 1858, and March 6th, 1860, provision was made for the foreclosure of the mortgages, by order of the governor, of such companies as should be in default in payment of the interest on the State bonds that should be issued to it, and also in default in the payment of the interest of its

629 own bonds, which should be held by the State as indemnity, as provided in said loan amendment, and, upon such foreclosure, to bid the property in, in the name and for the use of the State.

The original Southern Minnesota R. R. Co. having made default in the payment of interest, both on its own bonds and the bonds of the State, the governor duly caused the deed of trust to the State to be foreclosed, and all lands, &c., were sold to and purchased for and in the name of the State, and a conveyance made to the State therefor, and the State continued to hold all the lands, property, and franchises thus acquired until the 4th day of March, 1864.

On March 4th, 1864, the legislature of the State passed an act whereby the present railroad companies, defendants in this action, were created, and all rights acquired by the State by virtue of said foreclosure proceedings, or by any forfeiture to the State done or suffered by said old

or original Southern Minnesota R. R. Co., were granted to the new companies thereby created, free and clear of all liens whatsoever,
630 with further provisions that said new companies should have and receive severally the lands pertaining to the line of road which each was empowered to construct, upon the construction and completion of the same as provided in said act and in said act of Congress. The said railroad companies, defendants, severally went on under said act and completed their several lines of road, and received therefor, as the same were constructed, the lands from the State appertaining thereto under said congressional grant, said congressional grant having been amended so so as to allow the lands to be disposed of by the State, as the lines were constructed, in sections of ten instead of twenty miles, as originally provided. The said defendants the railroad companies, to raise the means to construct said lines of road, issued their bonds severally, and mortgaged their road, franchises, and lands to secure said bonds, as set forth in the answers of the trustees in this action.

That said defendants acquired no title, right, or license in regard to right of way from, through, or under the old company, but pro-
631 cured the right of way from the individual land-owners, over and upon which the old grading was done, so far as they used the same.

The present bill is by the plaintiff, as the holder of $500,000 State bonds, and is brought, not against the railroad companies to which they were issued, and which endorsed them, but against the new companies created in 1864, and to which the State regranted the lands and property, and against the trustees on mortgages executed by the present companies to secure bonds issued to borrow money to build the roads, and as to the lands (particularly the first 240 sections granted to the said roads) and franchises conferred upon the present companies by the legislature of 1864, seeks to charge them with a trust for the payment of the plaintiff's bonds.

The bill, in substance, prays for discovery and answer to special interrogatories, for a receiver, for an account of value of franchises and road-beds at time of conveyance to defendants, for the value of all lands sold for cash; that defendants pay over all moneys by them
632 received, and deliver all bonds, mortgages, contracts, or evidence of indebtedness for sale of lands to the receiver, convey to him all lands remaining unsold, all to be by him converted into cash and applied to the liquidation of said State bonds and interest, and for general relief.

Gordon E. Cole and F. R. E. Cornell for the complainants; Gilman, Clough & Wilde, E. C. Palmer, Gilfillan & Williams, and H. J. Horn, for the defendants.

DILLON, *Circuit Judge:*

The plaintiff, who was a contractor on certain railroads to which the State originally gave the benefit of the land-grant of Congress, holds bonds of the State of Minnesota, issued pursuant to the constitutional amendment of April 15, 1858, to the amount of half a million of dollars, upon which no interest has been paid since 1859, and which, by the expunging amendment to the constitution of 1860, if valid, the State legislature is disabled from paying or making provision to pay
633 until a law for that purpose shall be approved by a popular vote

These bonds were indorsed by the original companies to which they were issued, and which, as between them and the State, are the

principal and primary debtors. The present defendants, the St. Paul & Sioux City R. R. Co., and the Southern Minnesota R. R. Co., are not the companies with which the plaintiff contracted, and for which he did work, but are companies created by the State in 1864, and to which the State then regranted the lands and property which it had obtained by foreclosure or forfeiture, or both, from the old or original companies.

The bill proceeds upon the theory that the plaintiff's bonds are legal and subsisting obligations of the State; that the companies to which they were issued are the principal debtors, and the State their surety; that the lands, particularly the first 120 sections to each road, became by the act of the legislature of May 22, 1857, the property of the companies; that the only interest the State afterwards acquired in these lands was the right to hold them to secure itself against loss by
634 reason of its issue of State bonds; that the plaintiff, a creditor of the main debtor, has a right in equity to be subrogated to the rights of his surety (the State) in respect to all securites belonging to the principal debtor, and that the present companies, not being bona-fide purchasers of the lands for value and without notice, are open to the same trusts which might have been fastened upon them had they still remained in the hands of the State.

That the bonds held by the plaintiff are the legal obligations of the State, and binding upon it in law, honor, and justice, I have no doubt. Indeed, counsel have not seriously contended that these bonds were not valid. They were issued pursuant to an amendment of the constitution of the State, adopted by a popular vote of about 35,000 for to 8,000 against the project, and have been repeatedly recognized as valid by subsequent legislation of the State, and by the foreclosure proceedings. Under these circumstances, the fact that it does not appear that the acting governor signed the bill providing for the submission to the people of the loan amendment to the constitution is a matter of no
635 consequence. In the amendment to the constitution "the faith and credit of the State are pledged for the payment of the interest and the redemption of the principal" of the bonds; they are signed by the governor, and bear upon their face the seal of the State. They were issued to the plaintiff and others for grading and work actually done upon the roads at the rate specified in the constitutional amendment, and the State obtained the benefit of the securities it took for its indemnification, and regranted the property it acquired, free from all liens, to the present companies. Under these circumstances, if the State were suable in the courts there can be no doubt that the bonds would be legally enforceable against it. Justice and honor alike require the State to recognize these bonds as binding upon it, and, in the end, the court cannot doubt that the people of the State will so ordain. A State with such a future before it as the State of Minnesota cannot afford to bear the odium of repudiation, and if there are no other difficulties in the plaintiff's way except the suggested one that his bonds are
636 invalid, he will be entitled to the relief demanded.

The main purpose of the bill is to charge the first 120 sections of land granted by the State to the original companies, and by the act of 1864 regranted to the present companies, with an equitable trust in favor of the plaintiff for the payment of his State bonds indorsed by the old companies. It is admitted that the old companies, after doing a large amount of grading, became insolvent, and that they never completed any part of their line of road, and hence under the act of Congress never became entitled to any lands, unless it may be the first 120 sections to each of the roads. These, the plaintiff contends, the State,

under the act of Congress of March 3, 1857, making the grant, had a right to sell in advance of construction; that the act of the territorial legislature of May 22, 1857, was a sale of the 120 sections to the companies, by force whereof they became absolutely their property by a title not subject to be divested by their subsequent failure to build the roads; that, being the property of the companies, they had a
637 right to pledge them to the State to indemnify it against liabilities it assumed for them, and that the plaintiff has the right to follow these lands into the hands of the State or its grantees, with notice, and subject them to the payment of his bonds.

The lands granted to the State by Congress were held by it in trust, to be "exclusively applied in the construction of the road for and on account of which such lands were granted, and the same should be applied to no other purpose whatsoever." Said lands "shall be disposed of," says the act of Congress, "by the State only in the manner following, that is to say: that a quantity of land, not exceeding 120 sections for each of said roads and branches, * * may be sold; and when the governor shall certify that any 20 continuous miles of any of said roads, &c., is completed, then, and the quantity not exceeding 120 sections * * for each of said roads may be sold," and so on. This com-
638 prised the extent of the power of the State over these lands. The State was a trustee, whose powers were strictly limited by the congressional enactment. The State might, I am inclined to think, have sold the 120 sections in advance of construction, and conveyed a good title; but I doubt whether the act of the legislature of May 22, 1857, was a sale to the original companies so as to confer a title not subject to be defeated if they failed to construct the roads as required by the act of Congress, and I am clear that, under the act of Congress, it was not competent for the State, acting as trustee, to acquire any lien on or rights in these lands inconsistent with the unfettered execution of its trust relations and duties under the act of Congress. The State sustained to the old companies a double relation: one as trustee under the land-grant act of Congress; the other as the sovereign which had created these companies and was undertaking to aid them in their enterprise by a loan of its own credit. Now, it is clear that if the State became a creditor of these companies it could not lawfully stipulate for se-
639 curity out of lands which it held in trust, if this would be inconsistent with its duties under the act of Congress.

In this view I have serious doubts as to the validity of the security for its bonds which the State sought to obtain by the constitutional amendment upon the lands, or any of them, which had been granted by Congress, and which had never been earned by the completion of the required section of 20 (subsequently reduced to 10) miles of road. But I need not decide the point, for, assuming that the 120 sections became the absolute property of the company, it was then competent for the State to take security upon it for its indemnity, and to provide for the forfeiture thereof to the State in case the roads were not completed as required by the constitutional amendment.

The companies made default in the payment of interest, and their rights were foreclosed and the property purchased by the State. The companies failed to build and complete the roads as required by the constitutional amendment, and the legislation of 1864 shows that the State elected to take advantage of the forfeiture. Foreclosure and for-
640 feiture were cumulative and concurrent remedies. The main object of the mortgage was pecuniary indemnity to the State. The principal purpose of the provisions for forfeiture was to secure the com-

pletion of the roads by the stipulated time. By foreclosure or forfeiture, or both, the rights of the old companies in these lands became vested in the State. It need not be denied in this case that if these lands were still in the hands of the State or a voluntary grantee or a purchaser, with notice that the plaintiff, as the holder of unpaid State bonds, (to indemnify the State against which the companies had conveyed to it the lands,) might fasten an equitable trust upon them. Undoubtedly he could do this if these lands were in the hands of the State, discharged of any trusts under the act of Congress. But upon the failure of the old companies, the State, in 1864, in order to secure the completion of the roads, created the present companies, and granted to them all the lands and franchises which had been granted to the old companies, "free of all claims or liens," and on the faith of this legislation the new
641 companies have built completed the lines of road, the one at a cost of $5,000,000, and the other at a cost of $3,000,000. The money to accomplish this was raised upon deeds of trust and mortgages, yet outstanding, made by the present companies to secure issues of bonds, preferred stock, and land certificates. After all this is done, the present bill is filed, and it would in my judgment be inequitable as against the present companies and their creditors to hold that the plaintiff could subject to the payment of his bonds the land or other property which the defendant companies acquired from the State by the legislation of 1864.

A decree will, therefore, be entered dismissing the bill with costs.

Nelson, J., did not sit in the cause.

Decree accordingly.

642 And afterwards, to wit, on the 16th day of January, A. D. 1874, came the said plaintiff, by his said solicitors, and filed in the clerk's office of said court his bond on appeal, duly approved; which bond, with the approval thereon indorsed, are in the words and figures following, viz:

643 Supreme Court of the United States.

SELAH CHAMBERLAIN, APPELLANT,
vs.
THE ST. PAUL & SIOUX CITY RAILROAD Company, The Southern Minnesota Railroad Company, Albon P. Man, Samuel B. Ruggles, William R. Marshall, Charles Scheffer, Thomas A. Scott, Horace D. Hull, George J. Seney, and John A. Stewart, respondents.

Know all men by these presents that we, Selah Chamberlain, plaintiff and appellant, of Cleveland, in the State of Ohio, as principal, and David C. Shepard, of the county of Ramsey, and George E. Skinner, of the county of Rice and State of Minnesota, as sureties, are held and firmly bound unto the above-named The St. Paul & Sioux City Railroad Company, The Southern Minnesota Railroad Company, Albon P. Man, Samuel B. Ruggles, William R. Marshall, Charles Scheffer, Thomas A. Scott, Horace D. Hull, George J. Seney, and John A. Stewart in the sum of five hundred dollars, to be paid to the said parties, re-
644 spondents, their executors and administrators, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and adminis-

trators, firmly by these presents, sealed with our seals and dated this sixteenth day of January, 1874.

Whereas the above-named Selah Chamberlain hath prayed an appeal to the Supreme Court of the United States to reverse the decree made in the above-entitled suit by the circuit court of the district of Minnesota, which said appeal has been duly allowed by said court:

Now, therefore, the condition of this obligation is such that if the above-named Selah Chamberlain shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SELAH CHAMBERLAIN. [L. S.]
DAVID C. SHEPARD. [L. S.]
GEORGE E. SKINNER. [L. S.]

Sealed and delivered in presence of—
GORDON E. COLE.
F. R. E. CORNELL.

645 (Indorsed:) Supreme Court of the United States. Selah Chamberlain vs. The St. Paul & Sioux City Railroad Co. et al. Bond on appeal.

The within bond and the sureties thereon are hereby approved this 16th day of January, 1874.

R. R. NELSON,
Dist. Judge.

Filed January 16, 1874. H. E. Mann, clerk. F. R. E. Cornell & Gordon E. Cole, solrs. & of counsel for appellant.

646 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing is a true and complete transcript of the record, process, pleadings, orders, final decree, and all other proceedings in the foregoing entitled cause, and also of all the depositions, exhibits, and proofs taken therein, as appears from the original records and files of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Saint Paul, in the district aforesaid, this eighth day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 190. Selah Chamberlain, appellant, vs. The St. Paul and Sioux City Railroad Company, The Southern Minnesota Railroad Company, A. P. Mann, S. B. Ruggles, W. R. Marshall, C. Scheffer, T. A. Scott, H. D. Hall, G. I. Seney, and J. A. Stewart. Minnesota C. C. U. S. Filed 18th June, 1874.

U. S. OF AMERICA,

Supreme Court.

SELAH CHAMBERLAIN, *Appellant.*

Against

THE ST. PAUL & SIOUX CITY R. R. Co.,
THE SOUTHERN MINNESOTA R. R. Co.,
ALBON P. MAN,
SAMUEL B. RUGGLES,
WILLIAM R. MARSHALL,
CHARLES SCHAEFFER,
THOMAS A. SCOTT,
HORACE D. HULL,
GEORGE I. SENEY,
JOHN A. STEWART.
} *Respondents.*

Appellant's Brief and Abstract.

GORDON E. COLE.
Solicitors, and of Counsel for Appellant.

Republican Print, Faribault, Minn.

UNITED STATES OF AMERICA.

SUPREME COURT.

SELAH CHAMBERLAIN, *Appellant*,

Against

THE ST. PAUL & SIOUX CITY R. R. Co.,
THE SOUTHERN MINNESOTA R. R. Co.,
ALBAN P. MANN,
SAMUEL B. RUGGLES,
WILLIAM R. MARSHALL,
CHARLES SCHAEFFER,
THOMAS A. SCOTT,
HORACE D. HULL,
GEORGE I. SENEY,
JOHN A. STEWART.

Respondents.

APPELLANT'S BRIEF AND ABSTRACT.

STATEMENT OF CASE.

This was a bill in Equity in the Circuit Court of the United States for the District of Minnesota, by Selah Chamberlain, appellant, in behalf of himself and all other holders of State Railroad bonds, issued by the State of Minnesota to the Southern Minnesota Railroad Company,

against the respondents, the railroad companies and the other respondents, trustees of mortgage bonds issued by said railroad companies respectively.

The gist of the plaintiff's bill is as follows:

pp. 1-16, record. It alleges that in March, 1857, the Congress of the United States granted to the then territory of Minnesota certain lands in aid of the construction of certain railroads in said Territory. That in May following, the Legislature of said Territory passed an act granting and transferring the portion of said lands applicable to the lines of railroad now owned by the defendant companies to a certain railroad company known as the Southern Minnesota Railroad Company.

That by the terms of said Act of Congress, two hundred and forty sections of said land were authorized to be sold in advance of construction, and that, as to these, the absolute title was vested in the said Southern Minnesota Railroad Company by the said act of May, 1857.

That by an amendment to the Constitution of the State of Minnesota, the successor of the territory of that name, provision was made for a loan of State credit to said railroad company, among others, by the issue of State bonds payable to the order of said railroad company, and to be endorsed by it, and as security for the payment of principal and interest of said State bonds by said company, the said company was required to execute to the State a trust deed of said two hundred and forty sections of land, free from prior incumbrance, and to deliver to the State an

amount of its first mortgage bonds equal to the amount of State bonds received by it, upon its road, lands, and franchises, and in case said company should make default either in the principal or interest of the State bonds issued to it, that the Governor should proceed in such manner as might be prescribed by law, to sell the bonds or the lands held in trust as aforesaid, or might require a foreclosure of the mortgage. That the said railroad company accepted the terms of said amendment, and executed said securities to the State, and received five hundred and seventy-five State bonds of $1,000 from the State, pursuant to the terms of said amendment.

That on the 12th day of August, 1858, the Legislature of the State passed an act making provision for the sale of the lands so held in trust, and for the foreclosure of said mortgage executed by the company to secure its said issue of first mortgage bonds.

That the said company thereupon entered upon the construction of its road, and contracted with the plaintiff to build the same, and that plaintiff proceeded to grade and prepare the road-bed for said railroad, and actually graded fifty-seven and a half miles thereof ready for the superstructure, for which he received in payment five hundred of said State bonds so issued to said company as aforesaid, and no other consideration, and still holds said bonds, which have not been paid.

That said bonds were duly endorsed and transferred to him by said company, waiving presentment, demand, and

notice. That seventy-five other of said State bonds have been sold in the market in small quantities and passed into the hands of other parties to the plaintiff unknown.

That after having completed said grading, the said railroad company made default in the payment of the interest maturing on the State bonds issued to it, and a foreclosure was duly procured by the Governor, of the mortgage executed by said company to secure its first mortgage bonds as aforesaid, and the lands, road, and franchises covered thereby and embraced therein sold pursuant to a power of sale contained in the mortgage, and bid in in the name of the State of Minnesota.

(This sale was for a nominal consideration bid by the Governor in the name of the State, no part of which was ever paid.)

That the State of Minnesota took said original trust deed, and took and held all the lands, road, and franchises which passed to it under said foreclosure, until March, 1864, in trust for and as a fund for the payment of said State bonds. That the State never paid any portion of the said bonds, either principal or interest.

That on the 4th of March, 1864, being still seized and possessed and in the actual possession and control of all the lands granted by said Act of Congress in aid of the construction of said roads, and of an amount of the company's first mortgage bonds corresponding to the State bonds issued to it, and which greatly exceeded the amount for which said property sold on foreclosure, and upon which

all the principal and a considerable portion of the interest remained unsatisfied, and of the rights, property, and franchises of said company, conveyed in and by said mortgage and purchased at said foreclosure sale, and of all property and right acquired by virtue of any forfeiture, act, or thing done or suffered by said company, solely in trust and as a fund for the payment of the State bonds so issued by it to said company, and for the payment of the same to the several holders, and the State having paid no part, either principal or interest, of said State bonds, and the plaintiff being then and ever since the holder of and lawful owner of five hundred of said State bonds, and having an equity to have said fund faithfully applied by said State to the payment thereof, the State did, by an Act of its Legislature, grant, transfer, and dispose of all of said lands, franchises, and property without any consideration paid therefore to the defendant companies. (The two lines of road which the said Southern Minnesota Railroad Company had originally owned being, by this Act, divided, the one with the land and franchises appertaining thereto being transferred to the defendant, the St. Paul & Sioux City Railroad Company, the other to the defendant, the Southern Minnesota Railroad Company,) the latter being a new company organized by that name, and it was provided in and by said Act that, whenever said corporations should complete ten miles of railroad, the Governor should cancel all the bonds transferred to the State by said original company, which was accordingly done.

That thereafter, the Governor of the State, by virtue of the authority vested in him by said Act, deeded to said companies respectively, the said two hundred and forty sections, which the complaint alleged were duly vested in the original company by the Act of Congress of March, 1857, and the act of the Territorial Legislature of May, 1857, a description of which lands is contained in schedules attached to the complaint.

It is further alleged, that the defendant companies took said grants, with notice, etc., and that the other defendants, trustees of bondholders of the defendant companies, took, with notice of the plaintiff's equities, and that the said property so granted was held by the State of Minnesota as a trust fund for the payment of said State bonds, and had been transferred by the State to said corporations defendant in violation of said trust.

The complaint contains full jurisdictional allegations, and concludes with a prayer for discovery and answers to special interrogatories: for the appointment of a receiver, for an account of the value of franchises and road-bed at the time of conveyance to defendants, for the value of all lands contained in said schedules, being part of said two hundred and forty sections, sold by the defendant companies for cash.

That defendants pay over all moneys and deliver all bonds, mortgages, contracts, or evidences of indebtedness by them received on the sale of any such lands, to the receiver, and convey to him all of said two hundred and forty

sections of land remaining unsold, all to be by him converted into cash and applied to the liquidation of said State bonds and interest, and for general relief.

The supplemental bill making the trustees of the bondholders parties, charges that they are secured on other property not claimed by the plaintiff, sufficient in value to pay the entire indebtedness represented by them, which the answers do not specifically deny. pp. 54-55, record.

The material issues raised by the answers and contested at the hearing are:

The answers deny that the specific land described in the bill, or any land vested in the original Southern Minnesota Railroad Company, by virtue of any Act of Congress or of the Territorial Legislature, or that said corporation by the terms of said Acts, acquired any right or title thereto. pp. 42-33-63-79, record.

And deny that the lands or franchises of said original company were ever held in trust by the State for the payment of the State bonds.

They aver that the original company never obtained the right of way over lands upon which the grading referred to in the complaint was done, and that the defendant companies have purchased and paid for the same, of the landowners.

The answer of the trustees of defendant, the St. Paul & Sioux City Railroad Company, only denies notice to the bondholders, is not sworn to, and utterly fails in all the requisites of a good plea of *bona fide* purchaser.

The others deny notice, allege a valuable consideration

paid by the defendant trustees and the bondholders represented by them, and the expenditure of large sums of money by defendant companies in building the roads; plead *laches* on the part of the plaintiff in filing the bill; and an estoppel in pais, by alleged acts and conduct encouraging the defendants, as it is claimed, in the expenditure of money in building the roads.

An issue is also raised by one of the defendants as to the validity of the State bonds.

The facts proved, admitted by the pleadings, or found in the agreed statement of facts, may be summarized as follows:

By an Act entitled an Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State, approved March 3d, 1857, *Statutes at Large*, 1856-7, *p.* 195, provided as follows (so far as material here): Sec. 1.

p. 167, record. That there be and is hereby granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads (among other roads and branches) from St. Paul and St. Anthony, *via* Minneapolis to a convenient point of junction west of the Mississippi river, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux river.

Also from La Crescent, *via* Target Lake, up the valley of Root river, to a point of junction with another road named

in said Act (the former being the road to which the defendant, the St. Paul & Sioux City Railroad Company, has succeeded, and the latter the one now owned by the defendant, the Southern Minnesota Railroad Company,) every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads or branches are definitely fixed, sold any sections or any parts thereof, granted, as aforesaid, or that the right of pre-emption has attached to the same; then it shall be lawful for any agent or agents, to be appointed by the Governor of said Territory, or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached, as aforesaid, together with the sections and parts of sections designated by odd numbers, as aforesaid, and appropriated, as aforesaid,) shall be held by the Territory, or future State, of Minnesota, for the use and purpose aforesaid. Provided, that the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches.

Provided, further, *that the lands hereby granted for and on account of said roads and branches severally, shall be exclusively applied in the construction of that road, for and on account of which such lands are hereby granted, and shall be disposed of as the work progresses, and the same shall be applied to no other purpose whatsoever.*

SEC. 3. And be it further enacted, *That the said lands hereby granted to the said Territory, or future State, shall be subject to the future disposal of the Legislature thereof, for the purposes herein expressed and no other.*

SEC. 4. And be it further enacted, *that the lands hereby granted to said Territory, or future State, shall be disposed of by said Territory, or future State, only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches may be sold.* (It is this land, being one hundred and twenty sections applicable to and belonging to each of the roads in controversy, and which it is admitted by the pleadings [see complaint p. —, record] was definitely fixed, set apart, and certified to the State, and has been by it conveyed to the defendant companies, that is the subject of litigation in this action) *and when the Governor of said Territory, or future State, shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land, hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed, as*

aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold, and so from time to time, until said roads and branches are completed. And if any of said roads or branches is not completed within ten years, no further sale shall be made, and the land unsold shall revert to the United States. On the 22d of May 1857, the Territorial Legislature executed the trust reposed in the Territory by said Act of Congress, by the passage of an Act "entitled an Act" to execute the trust created by an Act of Congress "entitled an act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in that State," and granting certain lands to railroad companies therein named.

Which Act provided (so far as material here):

SEC. 3. *All the lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an Act of Congress (reciting the title of the Act hereinbefore set out) applicable to the said roads or lines aforementioned (being the two roads in controversy here and owned by the defendant companies respectively) are hereby disposed of and conferred to and upon the Root River Valley and Southern Minnesota Railroad Company, subject to the provisions hereinafter set forth and the provisions of the Act of Congress aforesaid.* p. 185, record.

(This company was incorporated by the Territorial Legislature in 1855, and its name was changed by an Act of the

Legislature passed at the same session as the Act executing the trust, [1857,] but subsequently to that Act, to "The Southern Minnesota Railroad Company.")

p. 187, record. SEC. 7. For the purpose of aiding in the construction of the railroads which by this Act, the several railroad companies mentioned in the Act are authorized to construct, all the interest and estate, present and prospective, of the said Territory and future State, in or to any and all the lands granted by the government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of the roads herein set forth, by virtue of the Act of Congress, etc., (reciting the title of the Act already set out) together with all and singular the rights, privileges, and immunities conferred or intended to be conferred upon said railroads, by said Act of Congress, are hereby granted to and vested in said railroad companies respectively; provided, that said lands shall be exclusively applied to and used by said railroad companies respectively in the construction of the aforesaid railroads, *and shall be disposed of only in the manner prescribed in said Act of Congress.*

p. 187, record. SEC. 8. The location and designation and any change or alteration of the route and line of said railroad shall be made by the aforesaid railroad companies respectively, and the same shall be from time to time and as fast as practicable reported to the Governor of the Territory, or future State, of Minnesota.

The selecting of lands provided for in the Act of Congress hereinbefore mentioned and *herein vested in said companies* shall be made by agents appointed by the Governor.

SEC. 11. The said railroad companies shall be capable in law of taking and holding any lands granted by the government of the United States or of this Territory, or future State, of Minnesota, to aid in the construction of railroads, which shall be conveyed to these companies by this Act, or by deed in fee simple, or any lesser estate, or by operation of law. p. 173, record.

And they may also borrow money, issue bonds or other evidences of indebtedness to secure the same, and may also mortgage, or pledge, or otherwise dispose of all their right, title, claim, or demand in or to any lands granted to said companies by this Act.

SEC. 12. When any continuous twenty miles of either of said railroads shall be completed, it shall be the duty of the Governor of this Territory, or future State, to certify that fact to the Secretary of the Interior, and so from time to time, as often as twenty more continuous miles of said railroads are completed, and *said lands shall become the property of the respective companies herein mentioned, in accordance with the provisions of the Act of Congress, etc.* p. 188, record.

Session Laws of Minnesota, Extra Session, 1857, *pp.* 1-18.
Edgerton's Railroad Laws, pp. 342-344-459.

The lines of railroad in controversey here were definitely surveyed, located, and marked and staked out upon the ground, to the extent of the grading hereinafter mentioned (to-wit: for the length of fifty-seven and a half miles) in July, 1857, and the survey filed in the General Land Office. *See 4th Clause, Agreed Statements of Facts, p.* 135, *and plaintiff's testimony, p.* 97, *record.*

By reason of pre-emption settlements and cultivation there was at the time said routes were definitely located so large a deficiency of lands on the first twenty miles of each of said roads, that it required all the alternate sections designated by odd numbers, within both the six and fifteen mile limits fixed by said Act of Congress to furnish the complement of lands accruing to the State under said Act of Congress, and the same were all subsequently certified to the State and are embraced in the schedules annexed to the bill of complaint in this action.

See agreed statement of facts, p. 140, *record.*

And in the case of the Southern Minnesota Railroad Company, the deficiency was so great that the entire grant fell short of the one hundred and twenty sections which it is claimed the companies were authorized to sell in advance of construction, amounting to only about fifty thousand acres.

See Pleadings, p.—— record, and agreed statement of facts, p. 148, *record.*

On the 26th of February, 1857, the Congress of the United States passed an Act entitled "an Act to authorize the people of Minnesota to form a constitution and state government preparatory to their admission into the Union on an equal footing with the original States," which provided that the inhabitants of that portion of the Territory of Minnesota embraced within certain limits prescribed by said Act be and they hereby are authorized to form for themselves a constitution and state government by the name of the State of Minnesota, and to come into the Union on an equal foot-

ing with the original States, according to the Federal Constitution.

Statutes at Large, 1856-7, *p.* 156.

A convention was accordingly called, which met in July, 1857, and framed a constitution, which was submitted to the people for approval and ratified by them on the second Tuesday in October, 1857, but the State was not admitted formally into the Union until the 11th of May, 1858.

At the same election which ratified the constitution, state officers and a state legislature were elected, pursuant to said constitution, H. H. Sibley being elected Governor. Samuel Medary was at the time Territorial Governor, and so continued until the State was admitted into the Union. The Governor and other state officers elected under the constitution did not qualify or enter upon the duties of their respective offices until the State was admitted into the Union.

The Legislature elected under the constitution convened in St. Paul on the first Monday of December and remained in session until March 20th, 1858, when it adjourned over until August following.

On the 9th of March, 1858, the said Legislature passed an Act entitled an Act proposing an amendment to section ten, article nine, of the constitution, and providing for submission of the same to the people, which is the same amendment hereinafter set out, under which the state bonds in controversey were issued.

The said Act was not signed or approved by the Executive of the Territory or State, but was approved by Charles

L. Chase as Acting Governor, Governor Medary, the Territorial Governor, being absent, and the said Chase being the Secretary of the Territory and acting as Governor in his absence, and said amendment was voted upon by the people and ratified by a vote of about five to one, at a special election for that purpose throughout the Territory, prior to the passage of the Act of Congress formally admitting the State.

See supplement to agreed statement of facts.

And testimony of Gen'l Sibley, p. 124, *record.*

The constitution provided that all territorial officers should continue to hold and exercise their respective offices until superseded by the authority of the State.

It also provided for the election of the legislature under the constitution, on the 13th of October, 1857, and that the first session of that legislature should commence on the 1st day of December next (1857).

Sec. 5, 6, *and* 16, *Schedule to Constitution of Minnesota, pp.* 44-46, *Gen. Statutes of* 1866.

The regularity and legality of the amendment, and of the state bonds issued pursuant to its provisions, has been constantly assumed and recognized by every department of the state government of Minnesota.

By the Legislature, as will be seen by the laws referred to in the evidence and hereinafter set out.

By the Courts in *First Division of St. Paul & Pacific Railroad Company vs. Parcher*, 14 *Minnesota Rep.* 297.

Huff vs. Winona & St. Peter Railroad, 11 *Minn.* 180.

By the Executive—see recitals in deeds in evidence and hereinafter referred to, and opinions of Attorney General, hereinafter cited.

The following is the amendment to the constitution of the State, commonly known as the loan amendment, referred to above and under which the state bonds in controversy were issued, (so far as is material): p. 191, record.

Amendment to section ten, article nine, of the constitution of the State: "The credit of the State shall never be given or loaned in aid of any individual, association, or corporation except that, *for the purpose of expediting the construction of the lines of railroad in aid of which the Congress of the United States has granted lands to the Territory of Minnesota*, the Governor shall cause to be issued and delivered to each of the companies *in which said grants are vested by the legislative assembly of Minnesota*, the special bonds of the State, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, as a loan of public credit, to an amount not exceeding twelve hundred and fifty thousand dollars, or an aggregate amount to all of said companies not exceeding five millions of dollars, in manner following, to-wit:

Whenever either of the said companies shall produce to the Governor satisfactory evidence, verified by the affidavits of the Chief Engineer, Treasurer, and two Directors of the company, that any ten miles of the road of said company has been actually constructed and completed, ready for placing the superstructure thereon, the Governor shall

cause to be issued and delivered to such company bonds to the amount of $100,000, and so on, as often as any ten miles shall be so completed, etc.

(In this connection, see the testimony of the plaintiff, the defendants introducing no evidence on the subject, as to the manner of doing the work, amount of grading, and of bonds, etc., pp. 96-97, record.)

The said bonds thus issued shall be denominated Minnesota State Railroad Bonds, and the faith and credit of this State are hereby pledged for the payment of the interest and the redemption of the principal thereof. They shall be signed by the Governor, countersigned and registered by the Treasurer, sealed with the seal of the State, of denominations not exceeding $1,000, *payable to the order of the company to whom issued, transferrable by the endorsement of the President of the said company*, and redeemable at any time after ten and before the expiration of twenty-five years from the date thereof.

(The bonds in controversy were in fact, issued, transferred, and endorsed in exact conformity, with these provisions. See copy of bond and endorsement set out in complaint and as an appendix to the testimony. See also plaintiff's evidence, pp. 96-97, 126-137, record.)

Each company shall make provision for the punctual payment and redemption of all bonds issued and delivered as aforesaid to said company, and for the punctual payment of the interest which shall accrue thereon, in such manner as to exonerate the Treasury of this State from any advances of money for that purpose, and as

security therefor the Governor shall demand and receive from each of said companies, before any of said bonds are issued, an instrument pledging the net profits of its road for the payment of said interest.

And a *conveyance to the State of the first two hundred and forty sections of land free from prior incumbrances, which said company is or may be authorized to sell in trust for the better security of the Treasury of the State from loss on said bonds,* which said deed of trust shall authorize the Governor and Secretary of State to make conveyances of title to all or any of such lands to purchasers agreeing with the respective railway companies therefor. Provided, that upon releasing the interest of the State to such lands, such sale shall be approved by the Governor, *but the proceeds of all such sales shall be applied to the payment of interest accruing upon the bonds in case of default in the payment of the same, and as a sinking fund to meet any future default in the payment of interest and the principal thereof when due.*

(NOTE.—It will be seen from an examination of the Act of Congress, and of the Act of the Territorial Legislature executing the trust, that several of the roads had branches, and were authorized by the Act of Congress to sell one hundred and twenty sections for each of said roads and branches, while in the case of the roads in controversy, two roads were transferred to one company, each of which was, if our construction of the act of Congress be correct, entitled to the disposal of one hundred and twenty sections of land in advance of construction, making two hundred

and forty sections, or the amount required to be conveyed to the State as security, free from all incumbrances, by the foregoing provisions.)

The amendment proceeds:

"And as further security, an amount of first mortgage bonds on the roads, lands, and franchises of the respective companies corresponding to the state bonds issued, shall be transferred to the Treasurer of the State at the time of the issue of state bonds, and in case either of said companies shall make default in payment of either the interest or principal of the bonds issued to said companies by the Governor, no more state bonds shall thereafter be issued to said companies, and the Governor shall proceed, in such manner as may be prescribed by law, to sell the bonds of the defaulting company or companies, or *the lands held in trust as above*, or may require a foreclosure of the mortgage executed to secure the same."

The amendment closes with the following proviso:

Provided, That, in consideration of the loan of state credit herein provided, the company or companies which may accept the bonds of the State in the manner herein specified, shall, as a condition thereof, each complete not less than fifty miles of its road on or before the expiration of the year 1861, and not less than one hundred miles before the year 1864, and complete four-fifths of the entire length of its road before the year 1866, and any failure on the part of any such company to complete the number of miles of its road or roads, in the manner and within the

several times herein prescribed, shall forfeit to the State all the right, title, and interest, of any kind whatsoever, in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them constructed, and a fee-simple to which has not accrued to either of said companies by reason of such construction, which was granted to the company or companies, thus failing to comply with the provisions hereof, by an Act of the Legislature of the Territory of Minnesota, vesting said lands in said companies respectively."

Pursuant to the requirements of said amendment, the said original Southern Minnesota Railroad Company proceeded and executed to the State and delivered the trust deed, of which the following constitutes the material portions:

"This Indenture made and concluded at St. Paul, in the State of Minnesota, the first day of October, 1858, by and between the Southern Minnesota Railway Company, party of the first part, and the State of Minnesota, party of the second part, witnesseth:

"That, whereas, by an amendment to the constitution of the State of Minnesota, (reciting the terms of said amendment, given above, applicable to and providing for said trust deed,) Now, therefore, the said party of the first part, for and in consideration of the premises and of the sum of one dollar, etc., has granted, bargained, sold, conveyed, and conferred, and by these presents does grant, etc., unto the said party of the second part, in trust for the uses and

purposes hereinafter specified, the first two hundred and forty sections of the land granted to the aforesaid Territory of Minnesota, by an Act of Congress, etc., (reciting the title of the Act hereinbefore repeatedly referred to,) and by the Act of the Territorial Legislature entitled, etc., (referring to the Act of said Legislature, executing the said trust vested in said Territory by said Act of Congress, hereinbefore set out,) granted to and vested in said party of the first part, to have and to hold, the said two hundred and forty sections of land, for the sole use, benefit, and behoof of the said party of the second part, forever in trust for the following uses and purposes, to-wit:

"First: In case of default in the payment of the interest or principal, when due, of the state bonds to be issued to the said party of the first part, in accordance with the provisions of section ten of article nine, of the constitution of the State of Minnesota (being the amendment referred to, as hereinbefore set forth,) then and in such case the said party of the second part shall proceed to sell, and the said party of the second part is hereby authorized and empowered, by their authorized agent or agents, to sell and convey by good and sufficient deed, any or all portions of the two hundred and forty sections of land hereby conveyed, first giving notice of the time and place of said sale, by advertising the same in two or more newspapers published in the city of New York and in the State of Minnesota, sixty days previous to the day of such sale, the proceeds of such sale or sales to be applied to the payment of the ac-

cruing interest or principal due on the said State bonds so to be issued as aforesaid. Provided, that if said party of the first part to these presents, shall, before the day of sale, pay all interest and principal then due, and all expense incurred by the State of Minnesota, the party of the second part, no sale shall take place, and the rights of said party of the first part shall not be impaired by reason of such default.

"In case of the sale of any or all of the two hundred and forty sections of land, as hereinbefore provided, by the said party of the second part, then, in such case, the trust hereby created shall cease and determine, and be null and void, and all the interest, claim, title, and ownership of said party of the first part, to any and all of the two hundred and forty sections of land, and every part and portion thereof, shall be and is hereby transferred, conveyed, bargained, and sold to the said party of the second part, and to their assigns, to be by them held in fee-simple, for their use, benefit, and behoof, forever, free from any and all interest, claim, demand, or ownership thereafter of the said party of the first part, in law or in equity. And the said party of the first part doth hereby covenant and agree, to-wit: That the said two hundred and forty sections shall be of average quality and value with those of the entire lands received and vested in said party of the first part by an Act of the Legislature, etc., (referring to the Act hereinbefore mentioned and set out).

"Second: That the said party of the first part, so soon

as the two hundred and forty sections of land, which said party of the first part now is or may be authorized to sell, or any part thereof, shall be set apart and designated by legal subdivisions by the Secretary of the Interior, or other legal authority of the United States, shall, upon demand of the Governor, sign, seal, and deliver to said Governor, in trust, a good and sufficient conveyance of the said two hundred and forty sections of land, or any part thereof, which said deed of trust shall authorize the Governor and Secretary of State to make conveyance of title to all or any of such lands to purchasers agreeing with the respective railroad companies therefor.

"Provided, That before releasing the interest of the State to such lands, such sale shall be approved by the Governor and the proceeds of all such sales shall be applied to the payment of interest accruing on the bonds, in case of default of the payment of the same, and as a sinking fund towards any further default in the payment of interest and the principal thereof, when due.

"Third: The said party of the first part hereby expressly reserves the right to contract with any person or persons, company or corporation, for the sale of all or of any part of the said two hundred and forty sections of land, upon such terms and conditions as said party of the first part may deem proper, subject to the approval of the Governor of said State, the party of the second part, and the proceeds of such lands shall be applied to the payment of interest accruing upon the said state bonds, in case of default

of the payment of the same, and as a sinking fund to meet any future default in the payment of interest and the principal thereof, when due.

"Fourth: That in case of the prompt payment by said party of the first part, of the principal and interest of the state bonds, to be issued by said party of the second part to the said party of the first part, and as soon as the same shall be fully paid and cancelled, then, in that case, this instrument shall be and become wholly null and void, and the same shall terminate, be annulled and cancelled, without any act or deed to be done or performed by the party of the first part or the party of the second part. And the said two hundred and forty sections of land, or such portion thereof remaining unsold, and all right, title, claim, interest, and demand thereto, in law and in equity, shall revert to and be re-invested in said party of the first part, as fully and perfectly as if this instrument had never been executed.

Provided, however, and it is hereby expressly stipulated by these presents, that nothing herein contained shall be construed to interfere with or invalidate any sale or sales of any portion of the said two hundred and forty sections of land made, or which may have been made in accordance with the terms of this indenture, prior to the said payment of principal and interest of the state bonds as aforesaid."

Duly acknowledged on October 15, 1858.

(See copy attached to the complaint, admitted in answers to be a true copy, p. 5-135, record.)

Prior to receiving any state bonds issued pursuant to said amendment to the constitution, the said, the original Southern Minnesota Railroad Company, delivered in accordance with its provisions its first mortgage bonds, corresponding in number and value to the state bonds issued to it as aforesaid, and to secure the same executed its mortgage or trust deed to Benjamin Pringle and Andrew G. Chatfield, trustees, which was acknowledged by its President and said trustees on the 16th day of May, 1859, which recites all of said various Acts and said amendment, and contains also the following recital: "And, whereas, the said party of the first part have executed and delivered to the Governor of the State of Minnesota, an instrument in writing, pledging the net profits of their road for the payment of the interest upon said state bonds, *and also a conveyance to the State of Minnesota of the first two hundred and forty sections of land, free from incumbrances, in trust, for the better security of the Treasury of the State, as required by the said amendment to the constitution.*" It then proceeds to convey to said trustees all its railroad and all its roads, lands, and franchises, rolling-stock, station-houses, etc., containing the language and descriptive phrases usual in railroad mortgages, and proceeds: "*Together with all the right, title, interest, or claim, whether legal or equitable, which the said party of the first part now has or possesses, or which it may hereafter acquire, in, and to that portion of the lands of the United States which were (by the Acts hereinbefore referred to) granted or intended to be granted to the party of the first part*, amounting in all to the

estimated quantity of seven hundred thousand acres, and containing a power of sale by the trustees, in case of default, and by the Governor of the State, upon their neglect on demand," etc.

Said instrument also contains the following covenant:

"And the said party of the first part hereby covenants and agrees to and with the said party of the second part, and their survivors, successor, or sucessors in the trust hereby created, that they will, from time to time, as the said party of the first part may be reasonably advised and required, for the benefit of the holders of said bonds, execute and deliver to the party of the second part, their survivors, successor, or successors, all such further grants, conveyances, and assurances of any property, right, or interest which may be hereafter acquired and used or held for the operation and maintenance of said railroads, to be held by them, in trust, as a further protection and security to the holders of said bonds, may be needful and proper.

It was further provided in and by said instrument "that it is expressly understood and agreed by and between the parties hereto, that nothing in this indenture contained shall prevent the party of the first part from accepting the loan to be made to the said company by the State of Minnesota, under and by virtue of the amendment to the constitution, but the said *party of the first part is at full liberty to accept and receive its portion of the state loan bonds, to be issued in pursuance of said amendment, and to execute all needful and proper acts, deeds, and instruments in security therefor.*"

The purport of this instrument as set out in the complaint is admitted, and that a true copy thereof is published in Edgerton's Railroad Laws, on p. 419, and that it was duly foreclosed by the Governor, on behalf of the State, and all lands, property, rights, and franchises described therein sold at public auction, pursuant to its provisions, and there being no other bidder, the Governor caused the same to be bid in and purchased for and in the name of the State, to-wit: October 16th, 1860.

See agreed statement of facts, p. 135-137, *record.*

It is also agreed that the State of Minnesota has never paid any part, either of principal or interest, of said state bonds, and that from the date of said foreclosure in 1860, the State of Minnesota, until she transferred the same to the defendant companies, on the 4th of March, 1864, continued to hold all the lands, property, and franchises acquired by her under said foreclosure sale.

See 12*th clause, agreed statement of facts, p.* 138, *record.*

It is also agreed that prior to said foreclosure sale and on the 23d day of May, 1860, the lands described in the schedule annexed to the complaint were formally certified to the State of Minnesota by the Commissioner of the General Land Office.

See 13*th clause, agreed statement of facts, p.* 138, *record.*

It is and was a matter of public notoriety in the State of Minnesota, and was admitted at the hearing and so stated and claimed by defendants' counsel in their argument, that the State paid nothing on the bid at the foreclosure sale,

and that no appropriation was ever made to cover any such bid.

Prior to the foreclosure two general laws were passed by the Legislature, to more effectually carry into effect the scheme of the loan amendment.

The first was a general Act entitled an Act concerning land-grant railroads, passed by the same Legislature which framed the loan amendment, and approved August 12th, 1858. p. 194, record.

It provided: SEC. 1. That every railroad company accepting the loan of state credit, shall make due provision for the punctual payment of the interest and the final redemption of the state bonds, and to that end *shall provide and arrange that semi-annual payments of interest and final payments of principal of the first mortgage bonds of said company shall mature and be payable sixty days before the interest and principal of the state bonds issued to it mature, and the interest and principal of the railroad bonds shall be paid at maturity thereof to the Treasurer of the State, together with such an amount as may be necessary to pay all exchanges and expenses in payment of the ensuing installments of interest or principal on the state bonds.*

And all said companies shall further make due provision that all necessary expenses and charges incurred to carry out the provisions of the amendment shall be borne and paid, *pro rata*, by the companies participating in the loan of state credit.

SEC. 2. Whenever any default shall occur in the payment

of interest or principal of the railroad bonds, so that no provision shall be made for the ensuing payment of the state bonds sixty days before the maturity of any installments of interest or final redemption of the state bonds, *the Governor shall immediately proceed to provide for such payment, and to indemnify the State for such payment or responsibility* by sale of a sufficient amount of the bonds of the defaulting company, or *by sale of the lands pledged, or foreclosure of the mortgage or deed of trust of such defaulting company, or by all or any of such means of indemnification, in the manner herein provided.*

SEC. 3. Provides manner of sale of companies' bonds.

SEC. 4. In case of a sale of lands to be made under and to provide for the default of any such company, the Governor *may advertise and sell the same in such parcels and at such times as shall be deemed most expedient, and all such sales and conveyances shall be made by the Governor and Secretary of State, and shall be absolute conveyances of the title in fee, as far as the same may have been invested* in any such company or the State, *and without any redemption or right of redemption in any company or subsequent creditor, person, or persons whomsoever,* but no sale of bonds or lands shall take place if the defaulting company make payment of all principal and interest then due, and all expenses incurred by the State, prior to the day of sale of any such railroad bonds or lands, but this provision shall not be so construed as to prevent the Governor and Secretary of State until such payment by the defaulting company, from making sales and conveyances of

any parcel of lands as aforesaid, without the consent or assistance of the defaulting company, whenever default shall occur in the provision by said company as herein required for any ensuing payment of interest or principal of the state bonds.

SEC. 5. All foreclosures of the mortgage or deed of trust of any defaulting company, and for which default a foreclosure of the mortgage or deed of trust of said company may be required or demanded, shall be by public sale of all the properties, rights, privileges, and franchises pledged in such deed of trust or mortgage, (and proceeds to define the details of such foreclosure and rights of purchasers, etc.)

SEC. 6. Provides for appointment of engineers by the Governor to inspect work before the issue of any state bonds.

Compiled Statutes of 1858, *p.* 839.

The plaintiff having made a contract with the original Southern Minnesota Railroad Company in the winter of 1857 or 1858 for building the road, to be paid in the state bonds, commenced work within sixty days after the passage of the loan amendment, and completed thirty-seven and a half miles of the road now owned by the defendant, the St. Paul & Sioux City Railroad Company, and twenty miles of that owned by the defendant, the Southern Minnesota Railroad Company, and finished in the fall of 1858 or the early spring or summer of 1859, and received in payment therefor, and for advances for right of way, etc., all the bonds issued by the State, five hundred of which he still holds, the remainder having been paid out by him, (see plaintiff's

testimony, p. 96, record,) and in 1860 the company became insolvent, and no work was afterwards done on the road by that company.

See 10th clause, agreed statement of facts, p. 137, record.

The grading was done upon the line located in July, 1857, under the directions of the company's engineer.

See plaintiff's testimony, pp. 97-98, record.

The present companies used and availed themselves of the plaintiff's work and the road-bed and bridges constructed by him.

See testimony of Clark W. Thompson, president of defendant, the Southern Minnesota Railroad Company, pp. 114-115, record.

It is agreed that *no title, right,* or license, *which the old company received, if any, in regard to right of way,* enured, in *fact,* to the benefit of the defendant companies, or either of them, nor did said latter companies, or either of them, have any knowledge or notice that said old companies had obtained any such right, title, or license, that each of the defendant companies bought and paid for the right of way from the individual land-owners over and upon which the grading by the plaintiff was done, so far as they used the same.

Agreed statement of facts, p. 140, record.

But it is also in evidence uncontradicted, that the original companies *did* procure the right of way, and that plaintiff paid for the same, and the deeds, vouchers, etc., were delivered over to the company which became insolvent in 1860,

and none of its officers or records are within the jurisdiction of the court.

See plaintiff's testimony, pp. 96-97, *record.*

It is also agreed that when the bonds were delivered to the plaintiff by the original company, Daniel Wells, Jr., was president, and they bore upon their face his genuine endorsement as such president.

See agreed statement of facts, p. 137, *record.*

And the action of the Board of Directors in authorizing the endorsement, and its ratification by the company afterwards, is abundantly proved by plaintiff's testimony, who was present at the meeting of the Board when such action was had.

See plaintiff's testimony, pp. 96-97, *record.*

(NOTE.—We note in passing, defendants' objection to parol testimony to prove the obtaining the right of way by the old company and the action of the Board of Directors in authorizing the endorsement of the bonds, and have merely to say that, as to the latter, the loan amendment required it in terms, and its acceptance by the company carried with it all the authority necessary for the president's endorsement, but as to parol evidence of multitudinous records when the proper custodians are beyond the jurisdiction of the court, it is only necessary to refer to a recent adjudication of this court. The grounds of objection assigned, viz: that the evidence is immaterial and incompetent, are, by the same authority, held to be too vague and indefinite.

Burton vs. Driggs, 20 *Wallace* 125.)

After the railroad companies had made default, the Legislature of the State, by an Act entitled "an Act in addition to an Act concerning land-grant railroads," being the Act last hereinbefore set out, approved on the 6th of March, 1860, provided as follows:

p. 197, record. SEC. 1. Default having been made in the payment of interest on the bonds issued by the land-grant railroad companies to and held by the State, and the trustees under the deeds of trust having neglected to foreclose the same according to the provisions of such deeds of trust, it is hereby made the duty of the Governor to foreclose the same or to cause the same to be foreclosed, in conformity with the provisions of such deeds of trust and in accordance with law, if, in his opinion, the public interest requires it.

SEC. 2. *Upon the sale of the property, rights, and franchises covered and embraced in such deeds of trusts, under such foreclosure hereinbefore mentioned, the Governor is hereby authorized and empowered, in his discretion, to bid off and purchase the same for and in the name* of the State, and to make or cause to be made to the State of Minnesota such suitable and proper conveyances as may be necessary.

General Session Laws, 1860, *p.* 269.

Four days afterwards the same Legislature, by concurrent resolutions approved on that day, submitted the following amendment to the constitution, to the people (which was adopted by the people, at an election held the 6th of November following):

That there be and are hereby proposed for the approval

or rejection by the people, the following amendments to the constitution:

That section two of article nine of the constitution be amended so as to read as follows:

SEC. 2. The Legislature shall provide for an annual tax, etc. But no law levying a tax or making other provisions for the payment of interest or principal of the bonds denominated Minnesota State Railroad Bonds shall take effect or be in force until such law shall have been submitted to a vote of the people of the State and adopted by a majority of the electors of the State voting upon the same.

That section ten of article nine of the constitution be amended so as to read as follows:

SEC. 10. The credit of the State shall never be given or loaned in aid of any individual, association, or corporation, nor shall there be any further issue of bonds denominated Minnesota State Railroad bonds, under what purports to be an amendment to section ten of article nine of the constitution, adopted April 15, 1858, which is hereby expunged from the constitution, *saving, excepting, and reserving to the State, nevertheless, all rights, remedies, and forfeitures accruing under said amendment.*

Session Laws Minn. 1860, *p.* 297.

Intermediate between the passage of the last-named resolutions and their adoption by the people, to-wit: in October, 1860, occurred the foreclosure and purchase by the Governor, pursuant to the Act hereinbefore referred to.

The next step in the natural sequence of the transactions

which have finally culminated in the present suit, is the
p. 219, record. legislation of 1861, referred to in the testimony of W. L. Banning.

See Banning's testimony, pp. 108-109-110-111, *record.*

See pp. 213-238, *Special Laws* 1861.

At that session, being the first after the foreclosure, there was a very heated and protracted controversy between the advocates of two theories in relation to the disposition of the lands, properties, and franchises acquired and held by the State under the securities required by the constitutional amendment, and delivered to the State by the several land-grant companies, and the foreclosure of the trust deed: one party, acting with whom were Wm. L. Banning, the witness, then a member of the legislature, Mr. Shephard, the agent and representative of the plaintiff, and the plaintiff himself, advocating the theory subsequently embodied in this Bill, that these properties were a trust fund for the payment of the bonds, and that no transfer looking to the completion of the roads should be made without coupling with it adequate provisions for the payment of the bonds, and the other, and the one which finally prevailed and eventually resulted in the transfer to the defendants in 1864, of which we complain, proceeding upon the theory embodied in the concurrent resolutions of that session, of repudiating the state bonds and disposing of the lands and properties in disregard of the rights of the holders of those bonds.

See testimony of Banning, Rice, and the plaintiff, pp. 109-117-124, *record.*

In enforcing his views on this subject, the plaintiff, at the session of 1861, presented a memorial or petition to the Legislature, asking that they retain the franchises, lands, and graded road-beds of the Minnesota & Pacific (which the plaintiff had also built, and in regard to the bonds of which a similar suit to the one at bar is now pending) and the Southern Minnesota Railroad Company until provision had been made for the payment of the state bonds issued on account of those roads, which was greeted with contempt and derision, not allowed to be entered on their journals or even to be read, and hustled under the table. The plaintiff did not keep a copy of it and has never seen it since.

See Banning's testimony, p. 112, *record.*
See plaintiff's " *p.* 124, "

(We note the objections of defendants' counsel, that this is an attempt to prove the contents of the memorial by parol testimony, but this objection was not made at the hearing or before the examiner, but merely that it was immaterial and incompetent.

See plaintiff's testimony, p. 124, *record.*

But if it had been parol proof of the contents of a paper treated as that was, tossed among the rubbish of a clerk's desk, of a legislature which adjourned thirteen years before the testimony was offered, and no copy of it kept by the plaintiff, would be admissible under any rules of evidence with which we are acquainted, all the proof of destruction of which, in the nature of the case, it was sus-

ceptible accompanied the offer. All the evidence is pertinent and competent to rebut the claim of laches and estoppel set up by defendants.)

The Act of that session, so far as related to the Southern Minnesota Railroad Company, so far as is material here, provided:

p. 219, record. SEC. 1. That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing by the said company heretofore done or suffered, or by virtue of any law of the State, or any foreclosure by the Governor of the State, acting for and in behalf of the State, or by reason of the sale of the same or any part of the same by the Governor, and bid in and purchased by the Governor for the benefit of the State of Minnesota, be and the same are hereby held in trust, to be continued, granted, and transferred for the purpose and on the terms and conditions hereafter in this Act provided, free and clear of all liens or claims thereon by the State of Minnesota, except as herein provided.

All the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to said company by the several Acts of the Legislature, etc., (referring to its original charter and the grant of lands in 1857,) are hereby declared to be held in trust by the State, to be continued, granted, and vested in (certain persons therein named) free and clear of all liens or claims of the State of

Minnesota, except such as are retained to the State of Minnesota or by the provisions of this Act.

SEC. 2. It is further enacted, that it is made a condition that said persons shall not acquire the title (to such property, describing it) until they shall have completed ten miles of railroad, and upon the completion of every twenty miles of railroad the Governor shall deed to them a full and absolute title in fee-simple to all lands appertaining thereto, which were conveyed to the State by the said Act of Congress, and which would have accrued to the original company, or to which it would, under any law of the State or Territory, be entitled.

SEC. 4. And be it further enacted, that whenever said parties shall fully complete said railroad, the Governor shall deliver, transfer, and assign to the company which they may form, all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota. p. 223, record.

SEC. 5. The grantees were required to build ten miles of said road within one year from the first of January, 1861, and further portions within periods therein fixed, and the entire grant was declared to be upon that express condition, and upon their failure to keep and perform either or any of the conditions in this section contained, *all the unbuilt portions of said road, with the properties, rights, and franchises appertaining thereto, shall be absolutely forfeited, and shall revert to the State* without any other act or ceremony whatever, in which case the State shall hold and possess the same in the like character it now holds them, without any merger or

extinguishment, to be used, granted, and disposed of for the purpose of aiding in the construction of said road.

SEC. 6. And be it further enacted, that, as a condition precedent to the right of said persons to receive said property, etc., and before any right or title whatever thereto shall vest in said persons, said persons or company taking under this act shall be required, as a guaranty of their good faith, to deposit with the Treasurer of the State $10,000 on or before July 1st, 1861.

SEC. 7. Upon the failure of the grantees to make said deposit, any other persons shall be entitled to take and receive said privileges and property upon the same terms, etc.

The plaintiff was greatly disappointed at the result of the contest in the session of 1861, (*see Banning's testimony, p.* 112, *record,*) but nothing being done under the legislation of that year, the same contest was renewed in the session of 1862, and the plaintiff was again in attendance, urging the plan of providing for payment of the bonds, as part of the scheme which should be devised for securing the building of the roads, and again his interest and claims were disregarded, and the experiment of 1861 repeated. This was regarded as a decisive vote against the claim and policy advocated by Mr. Banning and the plaintiff, (*see testimony of plaintiff and Edmund Rice, pp.* 117-124, *record,*) and the plaintiff then left the State, and was never again in the State during the session of the legislature until after the passage of the Act transferring all the lands and franchises to the defendants in 1864.

See plaintiff's evidence, p. 125, *record.*

The Act of 1862 was in most respects a substantial re-enactment of that of 1861, except that a provision for a deposit in advance as a guaranty of good faith was omitted, but upon failure to build ten miles on or before one year from January, 1862, the same forfeitures were imposed as by the Act of 1861.

Section one of the Act of 1862 followed closely that of 1861, except that in addition to the language, all rights acquired by any acts, deeds, sale, foreclosure, agreement, or thing by said company done or suffered, was inserted the following clause: "or by reason of any forfeitures," and then proceeded as in the Act of 1861, or by virtue of any law of the State, or any foreclosure by the Governor acting for the State, etc.

Section three contained a clause showing the legislative p. 225, record.
interpretation of the meaning of the Act of Congress as to the first one hundred and twenty sections of land, viz: upon the construction and completion of ten continuous miles of the road from La Crescent, (being the road which the defendant, the Southern Minnesota Railroad Company, now owns,) the Governor shall certify the same to the Secretary of the Interior, and thereupon, *and not before*, the said company may demand and receive from said Governor in the name *of the State, a deed in fee-simple of the one hundred and twenty sections of land which the State may then be entitled to, under the provisions of the Act of Congress hereinbefore referred to, for the purpose of aiding in the construction of said road*, and upon the construction of each and every twenty miles

of said railroad, as at present located, the Governor shall deed a full and absolute title to the lands appertaining thereto.

Ch. 18, *Special Laws* 1862.

p. 228, record. This Act also having failed to secure the building of the road, was re-enacted substantially in 1863, and again failed of its object.

Ch. 1, *Special Laws* 1863.

pp. 233-239, record. This brings down the history of these transactions to the Act of 1864, under which defendants claim. Of the corporators named in that Act, Andrew G. Chatfield was one of the original trustees named in the trust deed of the original Southern Minnesota Railroad Company, and both he and another, Luke Miller, are named as grantees in every one of the series of Acts we have referred to.

The grantees under the Act of 1864, who accepted said Act and were organized by it into both the defendant companies, were, with one exception, old residents of the State, and he, Mr. Stoddard, was an old resident of the city of La Crosse, in the State of Wisconsin, on the opposite side of the Mississippi river from the terminal point of the Southern Minnesota Railroad in Minnesota; eight of the twelve persons named in that Act as the corporators of the defendant, the Southern Minnesota Railroad Company, and who were the grantees therein, had been members of the legislature.

See testimony of its president, C. W. Thompson, p. 114, *record.*

Of the grantees who were authorized to incorporate themselves, and did incorporate themselves pursuant to that Act as the defendant, the St. Paul & Sioux City Railroad Company, three had been members of the legislature, another, clerk of the Senate, and another, one of the Supreme Judges of the Territory.

See testimony of Col. Merriam, p. 119, *record.*

Four of the corporators of the defendant, the Southern Minnesota Railroad Company, were members of the Legislature of 1860, which authorized the foreclosure, and voted for the Act authorizing said foreclosure, and were familiar with the entire history of the loan.

The persons to whom were granted the lands and franchises which the Minnesota Valley Railroad Company received, being the company now known as the defendant, the St. Paul & Sioux City Railroad Company, and the corporators in that company were all residents and old citizens of the State, and were so at the adoption of the loan amendment and at the foreclosure and during the entire period from the adoption of the loan amendment to the passage of the Act of 1864 and the deeds executed pursuant to its provisions by the Governor, and were familiar with the whole history of said proceedings. Of the other defendants, the trustees of holders of bonds issued by the defendant companies, Charles Schaeffer, one of the trustees of the St. Paul & Sioux City Railroad Company, was Treasurer of the State of Minnesota from 1860, when the Act authorizing the foreclosure was passed, during the entire period until long after

the passage of the Act of 1864, to-wit: until 1867, and as such had the official custody of the securities given to the State by the original Southern Minnesota Railroad Company, was present at the foreclosure and purchase by the Governor, and familiarly acquainted with the entire history of said proceedings.

Another of said trustees, William R. Marshall, is an old resident of the State, its Governor from 1866 to 1870, was a resident at the time of the loan amendment, and then and ever since resided in St. Paul, the capital of the State, and the city where such foreclosure took place. He was a trustee named in the trust deed of one of the original land-grant railroad companies which participated in said state loan, and as such, at the request of the Governor, caused its mortgage to be foreclosed, and was familiar and conversant with the entire history of such loan, the issue of said state bonds, and that they had never been paid and are outstanding in the hands of third parties, and that the State had foreclosed and bid in the lands and franchises of said companies for default in payment of said state bonds.

See 19*th*, 20*th*, *and* 21*st clauses, agreed statement of facts, pp.* 138-9, *record.*

These gentlemen, and Thomas A. Scott, of Pennsylvania Central Railroad fame, are the only trustees of the defendant, the St. Paul & Sioux City Railroad Company, who have answered.

Samuel B. Ruggles, one of the trustees of the defendant, the Southern Minnesota Railroad Company, in 1864, 1865,

or 1866, or possibly as late as 1867, although the witness thinks not—at any rate, at a time when he had already become such trustee, was in the company of the plaintiff several days on a Mississippi river steamboat, and evinced a perfect knowledge of the history of the whole matter.

See plaintiff's testimony, pp. 124-5, *record.*

This gentleman and Mr. A. P. Mann are the only trustees of the Southern Minnesota Railroad Company, defendant.

Horace Thompson testified: I am one of the Directors of the defendant, the St. Paul & Sioux City Railroad Company, and was its first president and one of the incorporators named in the Act of 1864. At the date of the passage of that Act, and prior thereto, I knew that the land-grant companies had received a loan of the State's credit, for which state bonds had been issued to them. I knew that those companies had given a mortgage on their lands and franchises to secure the payment of the bonds, and I knew that the companies had defaulted in paying these bonds, and that the State had foreclosed and bid in the lands and franchises under the foreclosure. I knew also that the State had not paid the bonds. I suppose I was aware of all important action of the State in reference to the payment or non-payment of these bonds. I knew that these bonds were outstanding, and some of them in the hands of third parties. The commercial value of the bonds at the time of the passage of the Act of 1864 was very low, seventeen to twenty-five cents on the dollar. I was aware of this de-

preciation in value. I suppose the amount of these bonds outstanding was about $2,000,000. I understood that the plaintiff had done most of the original grading on these roads, and had taken his pay in these bonds. At the time of the legislation of 1864, it is impossible for me to state what I then understood the amount of the bonds he held was. I must have had an idea at that time that he held a large amount of bonds, and what that amount was. All my associates mentioned in the Act of 1864 were residents of this State. I presume they were familiar with the history of the transactions in relation to these state railroad bonds. In 1864, and since that time, I have, to some extent, had business with railroad and commercial circles in Wall street, New York. Among all railroad or financial men, the history of these transactions was generally known.

See Thompson's testimony, pp. 101-2, *record.*

Clark W. Thompson testified: I am president of the defendant, the Southern Minnesota Railway Company. Have been a director of that company ever since its organization under the Act of 1864, and one of its active managers since about 1867, and all the time stockholder. I held and controlled, until about the first of December last, $2,250,000 out of the capital stock of $3,860,000. At the time we took the lands and franchises under the Act of 1864, I was aware that the State had loaned its credit to the road, and that the old company had issued its bonds to the State to secure the payment of the loan. I was also aware that the Southern Minnesota Railroad Company was one of the land-grant

companies which participated in that loan of state credit. I was aware that the mortgage had been foreclosed and the lands and franchises bid in by the State, and that the State at the time of the passage of the Act of 1864, held these lands and franchises under that foreclosure. I understood that the State had issued of these state railroad bonds about $2,800,000. I was also aware that the State had made no provision for the payment of either the principal or interest of these state railroad bonds. Was aware that the interest had not been paid on them, and that the plaintiff had a considerable amount of these bonds, issued to the Southern Minnesota Railroad Company. My associates named in the Act of 1864 were all old residents of the State except Mr. Stoddard, who lived directly across the river in Wisconsin. I presume my associates had the same general knowledge of these matters which I had. It was a subject of public notoriety.

Pp. 114-115, *record.*

Hon. Edmund Rice testified: I have resided in St. Paul since July, 1849. I have been connected with railroading in Minnesota since 1854 to 1872. I was president of the Minnesota & Pacific Railroad, one of these land-grant railroads, from May, 1857, to December, 1871. I devoted my entire time to matters connected with these railroads. I have been frequently in the legislature of this State; was a member of the legislature in 1864, 1865, 1867, 1872, and 1873, and have been familiar with railroad legislation since 1860. The topic of the disposition of the state bond ques-

tion and the building of the land-grant railroads, was in nearly all the legislatures down to 1862, and was the subject of frequent discussion in them all. By reason of my connection with Minnesota railroad enterprises has brought me in connection with railroad and financial circles in New York, and also in Europe. In most of these circles, if not in all of them, the history of the Minnesota State Railroad Bonds, and the loan amendment and the proceedings under it, and the State's neglect to pay the interest and to make provision for its payment, was generally known and understood. In nearly all these circles the amendment to the constitution and the amendment to that and the legislation in respect to it had to be critically examined.

See Rice's evidence, p. 117, record.

The defendant companies paid nothing for the grant.

See Thompson's evidence, p. 102, record.

See Gov. Sibley's " p. 123, "

It is also admitted that these matters were matters of public notoriety in the State of Minnesota at the time of the transfers to defendants, and that the bonds of the defendant companies are held by persons who purchased for value, and without notice other than the law would imply from the existence of the laws, records, conveyances, and proceedings proved or admitted of plaintiff's claim, etc.

See 19th and 22d sections, agreed statement of facts, p. 138, record.

pp. 223-239 record. On March 4th, 1864, the Act passed under which the defendants claim. This Act for the first time divided the two

roads, which had hitherto been held under one charter by a single corporation, and vested one, and the lands and franchises appertaining to it, in the defendant, the St. Paul & Sioux City Railroad Company, and the other in the defendant, the Southern Minnesota Railroad Company, the Act being in two chapters, one devoted to each company. The language of the granting clause is the same as that in all the previous Acts, except that of 1861.

SEC. 1. That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company, acquired by the State of Minnesota by virtue of any acts, deeds, sale, foreclosure, agreement, or thing, by the said company heretofore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the Governor of the State, acting for and in behalf of the State, or by reason of the sale of the same, or any part thereof, by the Governor of the State of Minnesota, and bid in and purchased by the Governor of the State of Minnesota, for the benefit of the State of Minnesota, and all the lands, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota in and by virtue of an Act of Congress (reciting the title of the Act of Congress repeatedly hereinbefore referred to) hereby disposed of and conferred, etc., *free and clear of all claims and liens thereon*, and free and clear of all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this Act, and all the rights, privileges, franchises,

lands, property, and interests granted by the Territory of Minnesota to the (original company) by the several Acts of the legislature, etc., (referring to the original charter and the Act of May, 1857, executing the Congressional trust,) to parties therein named, (who are authorized to organize, and indeed organized, by the Act as the defendant corporations).

pp. 235-240, record. Section four of chapter one, and two of chapter two, impose a condition upon the grant, that no title shall be acquired by said companies respectively, until ten miles of road shall have been completed by said company.

pp. 237-242, record. And upon the construction and completion of ten miles of its road, each company is declared entitled to *demand and receive from the Governor a deed in fee-simple to the one hundred and twenty sections of land which the State may then be entitled to, under the provisions of said Act of Congress* for the purpose of aiding in the construction of said roads. And upon the construction and completion of each and every consecutive twenty miles of said railroad, the Governor shall execute, in the name of the State, a full and absolute title in fee-simple to all the lands appertaining thereto, which were conveyed to said State by said Act of Congress, etc.

pp. 237-242, record. SEC. 6 OF CH. 1 AND 4 OF CH. 2. Whenever the parties herein named, or said corporation, their successors or assigns, shall fully complete ten miles of railroad, *the Governor shall cancel all the bonds issued by the Southern Minnesota Railroad Company to the State of Minnesota.*

pp. 141-147-152-158, record. The companies having completed the ten miles of road as

specified in said Act, the Governor executed to them respectively deeds of the lands described in the schedules attached to the complaint, which deeds contained the following recitals:

This indenture, made this sixth day of January, in the year of our Lord one thousand eight hundred and sixty-six, between the State of Minnesota, party of the first part, and the Southern Minnesota Railroad Company, a body corporate created and organized under and by the laws of the State of Minnesota, party of the second part, witnesseth:

Whereas, by an Act of Congress of the United States of America, approved on the third day of March, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," there was granted, by the United States of America, to the late Territory of Minnesota, for the purpose of aiding in the construction of certain railroads therein named, among others one from La Crescent, *via* Target Lake, up the valley of Root river, to a point of junction with the Transit Railroads, east of range seventeen, every alternate section of lands designated by odd numbers, for six sections in width on each side of said roads and branches. But in case it should appear that the United States should have, when the line or route of said roads should be definitely fixed,

sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents, to be appointed by the Governor of said Territory, or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of section above specified, so much land in alternate sections, or parts of sections, as should be equal to such lands as the United States had sold or otherwise appropriated, or to which the rights of pre-emption had attached, as aforesaid, which lands thus selected in lieu of those sold, and to which pre-emption rights had attached, as aforesaid, together with the sections and parts of sections designated by odd numbers, as aforesaid, and appropriated as aforesaid, should be held by the Territory, or future State, of Minnesota, for the use and purpose aforesaid.

And, whereas, it was further in and by said Act provided, that the said lands thereby granted to the said Territory, or future State, of Minnesota, should be subject to the future disposal of the legislature thereof, for the purposes therein expressed, and no other, and that the lands thereby granted to said Territory, or future State, should be disposed of by said Territory, or future State, only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said roads and branches, might be sold, and when the said Governor of said Territory, or future State, shall certify to

the Secretary of the Interior, that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land thereby granted, not exceeding one hundred and twenty sections for each of said roads or branches, having twenty continuous miles completed, as aforesaid, and included within a continuous length of twenty miles of each of said railroads or branches, might be sold, and so from time to time until said roads and branches are completed.

And, whereas, the late Legislative Assembly of the late Territory of Minnesota, by an Act approved on the twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty-seven, entitled "An Act to execute the trust created by an Act of Congress entitled 'An Act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State,' " and granting lands to certain railroad companies therein named, did authorize and empower the Root River Valley and Southern Minnesota Railroad Company, a then existing corporate body, to survey, locate, and construct, complete, and perpetually to have, use, maintain, and operate a railroad with one or more tracks or lines, from La Crescent, *via* Target Lake, up the valley of Root river, to a point of junction at Rochester (with a railroad from Winona, *via* St. Peter, to a point on the Big Sioux river south of the — parallel

of north latitude) east of range seventeen in the Territory of Minnesota: Provided, the last mentioned railroad is operated and by way of Rochester, in accordance with the act of incorporation of said Root River Valley and Southern Minnesota Railroad Company, approved March 2d, 1855, and all subsequent amendments thereto, and did, by said last named Act of the Legislature of said Territory, provide that all lands, interests, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota, in and by virtue of the aforesaid Act of Congress, approved March 3d, 1857, applicable to the said last named roads or lines, are hereby disposed of and confirmed to and upon the said Root River Valley and Southern Minnesota Railroad Company.

And, whereas, by a deed of trust executed by the Southern Minnesota Railroad Company, on the first day of October, A. D. 1858, to Benjamin Pringle, of Batavia, New York, and Andrew G. Chatfield, of Belle Plaine, State of Minnesota, trustees, to which reference is made for further description, the said Southern Minnesota Railroad Company conveyed to said trustees all their rights, title, and interest in said railroad and lands hereinbefore mentioned, in trust, for the payment of the first mortgage bonds issued by said company.

And, whereas, the State of Minnesota, pursuant to the provisions of the constitution of said State, became the owner and possessor of six hundred of the first mortgage bonds of said company, of denominations of one thousand dollars each;

And, whereas, said company made default in the payment of the interest due upon said bonds, and the said trust deed was fully foreclosed, and the lands, roads, and franchises therein conveyed, sold pursuant to a power of sale contained in said deed, and all the right, title, and interest of said company therein bid off and purchased by the Governor of said State of Minnesota, for and in the name of said State, pursuant to law;

And, whereas, by the provisions of chapter one of the Act of the Legislature of the State of Minnesota, entitled "An Act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," approved March 4th, 1864, it was provided "that all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company, acquired by the State of Minnesota, by virtue of any acts, deeds, sales, foreclosure, agreement, or thing, by the said company hereinbefore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the Governor of the State, acting for and in behalf of the State, or by reason of a sale of the same, or any portion thereof, by the Governor of the State of Minnesota, and bid in and purchased by the Governor of the State of Minnesota, for the benefit of the State of Minnesota, pertaining to the line of roads from La Crescent up the Root river valley, to a point of junction with the Transit (now Winona and St. Peter) at Rochester, and also pertaining to the line of road and branches prescribed in an

act entitled "An Act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, and in the several acts amendatory thereof. Provided, that the branch mentioned in said act, running through the southern tier of counties, shall commence at or east of range ten, and all the lands, interest, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota, in and by virtue of said act of Congress, approved March 3d, A. D. 1859, entitled "An Act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," applicable to the said road or line of the said Southern Minnesota Railroad, hereinbefore specified, are hereby disposed of and conferred to and upon the said Southern Minnesota Railroad Company, subject to the provisions of the Act of Congress aforesaid, be, and the same are hereby held in trust, to be continued, granted and transferred for the purpose, and on the terms and conditions hereinafter in this act provided, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this Act, and all the rights, privileges, franchises, lands, property, and interest granted by the Territory of Minnesota to the Root River Valley and Southern Minnesota Railroad Company, by the several Acts of the Legisla-

ture of said Territory, the one entitled "An Act to incorporate the Root River Valley and Southern Minnesota Railroad Company," approved March 2d, A. D. 1855, and of the several Acts amendatory thereof, and an Act entitled "An Act to execute the trust created by the Act of Congress entitled 'An Act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads of said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named, approved May 22d, A. D. 1857, pertaining to the line of roads from La Crescent, up the Root river valley, to a point of junction with the Transit (now Winona and St. Peter) at Rochester, and pertaining to the line of roads and branches prescribed in said Act of incorporation of the Root River Valley and Southern Minnesota Railroad Company, approved March 2d, A. D. 1855, and the several Acts amendatory thereof, are hereby granted and transferred to T. B. Stoddard, C. D. Sherwood, Luke Miller, Daniel Cameron, Clark W. Thompson, William D. Hurlbert, Hiram Walker, William Meigher, B. D. Sprague, H. W. Holley, Thomas McRoberts, and William Morin, their associates and successors, with all the immunities, rights, property, benefits, and privileges, which the said Root River Valley and Southern Minnesota Railroad Company, or Southern Minnesota Railroad Company, had, or might, or could have by reason of the passage of the said Acts, to said roads or

lands, free and clear of all claims and liens thereon, and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this Act.

And, whereas, it was further provided in said Act of the Legislature of the State of Minnesota, approved March 4th, A. D. 1864, that the said person or persons or corporation should not fully acquire the title to road-beds, right of way, depot grounds, culverts, bridges, turnouts, switches, rights, privileges, and franchises, and the track and line of the said Southern Minnesota Railroad Company, until said company should fully complete and put in running order ten miles of said railroad, and upon the construction and completion of ten miles of said road, with the cars running thereon, the Governor shall certify the same to the Secretary of the Interior, and thereupon, and not before, the said company may demand and be entitled to receive from said Governor, in the name of the State, a deed, in fee-simple, of the one hundred and twenty sections of land which the State may then be entitled to, under the provisions of the Act of Congress hereinbefore referred to, approved March 3d, 1857, for the purpose of aiding in the construction of said road.

And, whereas, satisfactory evidence has been filed with the Governor of the State that ten miles of said road has been constructed and completed, and that the cars are running thereon;

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises, has

granted, bargained, sold and conveyed, transferred and assigned, and by these presents does grant, bargain, sell, convey, transfer, and assign unto the party of the second part, and assigns, one hundred and twenty sections of land, being the lands described in the lists hereto annexed marked "A," which are hereby made a part of this deed, and to which reference is hereby particularly made.

To have and to hold the same unto the said party of the second part and its assigns forever.

In witness whereof, the party of the first part has caused the great seal of the State to be hereto affixed, and this indenture to be signed by the Governor, pursuant to the authority aforesaid.

STEPHEN MILLER,
Governor of Minnesota.

By the Governor:

D. BLAKELY,
Secretary of State.

Signed, sealed, and delivered in presence of

ROBERT D. MITCHELL,
PENNOCK PUSEY.

{ Seal of the State of Minnesota. }

STATE OF MINNESOTA, County of Ramsey. } ss.

Be it known that on this sixth day of January, A. D. 1866, personally appeared before me Stephen Miller, Governor of Minnesota, and acknowledged that he executed the foregoing conveyance as the deed of the State of Minnesota,

pursuant to the authority vested in him by law. Witness my hand and notarial seal, the day and year aforesaid.

{ Notarial } PENNOCK PUSEY,
{ Seal. } Notary Public, Ramsey Co., Minn.

The witnesses for the defendants testified that they never heard of Mr. Chamberlain's making the claim embodied in the bill until about the time the suit was brought, and to casual meetings with plaintiff after the passage of the Act of 1864, chiefly an accidental meeting between plaintiff and Messrs. Thompson and Merriam, at Washington, in which he expressed the opinion that he thought the enterprise of building the road, under the Act of 1864, a good financial one, and expressed his hearty good-will and encouragement; giving as a reason, that when these land-grant roads were built, the State could no longer have a reasonable excuse for not paying his demands on the bonds.

On cross-examination Col. Merriam says:

When I asked plaintiff his opinion, it was as to whether it was a good enterprise financially, not as to whether the title to the property was good. I don't think that question as to title was asked him. The aid Mr. Chamberlain proposed to render us, was to assist with a good word in financial circles.

See testimony of Merriam and Thompson, pp. 99-119, *record.*

E. F. Drake, president of the St. Paul and Sioux City Railroad Company, testifies to a conversation after he became president of the road, when he received from the

plaintiff general expressions of congratulation or pleasure that "we were going on with the work."

"Our conversations when I met plaintiff generally turned on the question of the state bonds, which he felt anxious to have paid, and in this I sympathized with him and sustained him.

"He always expressed confidence that when the roads were built, the State would be able and the people would be willing, when they got what the bonds were given for building."

On cross-examination the witness testified:

The various conversations which I had with Mr. Chamberlain were not business conversations, but casual conversations discussing railroad matters. I did not inform him of my intention of becoming a member of the St. Paul & Sioux City Railroad Company before I became a member of it.

On direct examination witness said:

I think before I became connected with the company, or about that time, the company called upon Mr. Attorney General Cole (not as Attorney General) to professionally examine the laws relating to the company, and the proceedings by which the State acquired title, and Mr. Cole gave the company his opinion, sustaining the action of the State, pronouncing the action regular, and the property clear of incumbrance. The opinion was in writing.

Also consulted Judge Chatfield on the same general points, in behalf of the company, and he gave the opinion

that the legislation was legal and the title good in the company, free of all claims.

Had a less formal conversation with Mr. Cornell. Don't recollect it particularly, but do recollect that no doubts were thrown on the regularity of the proceedings or the title of the company.

See Drake's testimony, pp. 105-104-106, *record.*

pp. 246-248 record. In 1870, the roads being then in active progress, an attempt was made to pay the Minnesota State Railroad Bonds, by the passage of an Act submitting the proposition to the people to apply five hundred thousand acres of internal improvement lands, held by the State, for that purpose. The bill passed and was ratified by the people, but owing to its impracticable provisions, providing for the consent of the holders of two thousand bonds, the project failed.

See Chap. 13, *General Laws*, 1870.

p. 248, record. In 1871 a new attempt was made, and a bill passed submitting a proposition to the people, appointing a commission to determine the validity of the bonds. The bill was defeated at the polls.

See Chap. 21, *General Laws*, 1871.

In 1872 the attempt was repeated and was defeated in the Legislature, and in the spring of that year the plaintiff filed this Bill.

ASSIGNMENT OF ERRORS.

The decision of the court below dismissing the bill, was erroneous for the following reasons:

FIRST.—The Minnesota State Railroad Bonds are valid and subsisting obligations.

SECOND.—The proper construction of the Act of Congress of March 3d, 1857, granting lands to the States of Minnesota and Alabama, in aid of railroads, a construction contemporaneously and always put upon it by the Department of the Interior and General Land Office, and by every department of government of the State of Minnesota, was and has been, that the two hundred and forty sections of land in controversy in this action were vested in the State, with absolute right of disposal for the purposes named in said Act, at and from its passage, and were, by the Act of the Minnesota Legislature of May 22d, 1857, vested absolutely in the Southern Minnesota Railroad Company, with absolute right of disposal to secure the means of inaugurating the enterprise.

So that the State of Minnesota, having *quoad* this land, fully executed the trust reposed in it by said Act of Congress, in May, 1857, had the right and power, to the same extent as a private capitalist would have had, to supply the means for commencing the road, and receive a valid conveyance of such lands from said company as security therefor, in October, 1858.

THIRD.—The lands, property, and franchises of the Southern Minnesota Railroad Company conveyed by that com-

pany to the State, pursuant to the requirements of the loan amendment to the constitution of the State of Minnesota, were a trust fund, and so received and held by her, for the payment of the holders of the Minnesota State Railroad Bonds, issued to that company. The company being the principal debtor, the State the surety upon the bonds, and the holders of the bonds the creditors, the latter were, upon familiar principles of commercial law, entitled to the benefit of the securities held by the surety, the State, and such was the plain intention of the framers, and the only construction of which its language is susceptible, and the diversion of this trust fund by its gratuitous distribution to the defendants, taking with notice of the manner and purposes in and for which it was held by the State, gives the plaintiff a right in equity to pursue that fund in the hands of the defendants.

FOURTH.—The State never availed itself of the constitutional forfeiture, and if she had, it could have had no application to the two hundred and forty sections of lands, and franchises and road-bed appertaining thereto, which we seek to subject to the trust.

FIFTH.—The casual conversations and congratulations of plaintiff, after the passage of the Act making the grant to the defendants, appearing in the testimony, are entirely insufficient to create an equitable estoppel upon the plaintiff to resort to a court of equity for the enforcement of his rights.

SIXTH.—The delay from 1864 until 1872 to bring this ac-

tion is not such laches as will justify the dismissal of the bill.

SEVENTH.—It was error to dismiss the bill. The case should have been referred to a master in any event for an accounting, and if it was found that other property was held by the defendant trustees sufficient in value to pay all the bonded indebtedness of the defendant companies, the pretended equities arising from large expenditures on the faith of the validity of their title would have been destroyed.

ARGUMENT.

FIRST. *a.*—As to the construction of the Act of Congress of March 3d, 1857.

The lands conveyed by this Act to the State, whether in trust or otherwise vested, for the purposes of the grant, from the passage of the Act of Congress, the grant being *in præsenti* in the nature of a float, the specific lands to which it would attach awaiting the definite location of the road.

No patent was required; nor did the Act of August 3d, 1854, 10 *Stat. at Large* 346, providing that when the law does not convey the fee-simple of the lands or require patents to be issued therefor, the lists of the lands, certified by the Commissioner of the General Land Office, shall be regarded as conveying the fee, have any application to this grant; the language is, "that there be and is hereby granted."

See opinion of Attorney Gensral Black upon the Little

Rock and Fulton grant, which is in the exact language of the present one. 10 *Stat. at Large* 155.

Lester's Land Laws, p. 524.

Railroad Co. vs. Smith, 9 *Wallace* 95.

Lessieuer vs. Price, 12 *Howard* 59.

Rutherford vs. Greene, 2 *Wheaton* 196.

Cooper vs. Roberts, 18 *How* 173.

Schulenberg vs. Harriman, 21 *Wal.* 44.

Railroad Land Co. vs. Courtwright, 21 *Wal.* 310.

The two cases, decided upon grants in the same language as the one at bar, are conclusive.

b.—As the Act of the Territorial Legislature, purporting to vest the land grant in the Southern Minnesota Railroad Company, was passed in May, 1857, and the survey and definite location and staking out of the line of the railway was made in July, 1857, it is just possible that it may be claimed that the title did not vest until that time, and hence the Territory had no title which could pass by the Act executing the trust in May preceding.

But where there are divers Acts concurrent to make a conveyance, estate, or other thing, the original Act shall be preferred, and to this the other Acts shall have relation.

So in the language of this Court, quoting from Cruise on Real property, there is no rule better founded on law, reason, and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance, shall be taken together as one act, and operate upon the substantial part by relation.

Landes vs. Brandt, 10 *Howard* 348.

While as against pre-emptors and purchasers from the United States the rights of the Territory might not attach, until the specific sections had been designated by a location of the road, yet as to intermediate conveyances the location and definite designation of the specific land took effect by relation from March 3d, 1857, the date of the Act of Congress, so as to render valid every intermediate sale or disposition of the land by the Territory.

Jackson vs. McCall, 3 *Cowen* 73-80.

As we have said, the road was definitely located and staked out on the ground in July, 1857, and the survey filed in the General Land Office.

See record, p. 135.

The entire grant applicable to the road now owned by the defendant, the Southern Minnesota Railroad Company, did not exceed one hundred and twenty sections, and is described by government subdivisions in the schedules annexed to the complaint.

Record, p. 138.

By reason of pre-emption settlements, etc., there was, at the time the roads were definitely located, viz: in July, 1857, so large a deficiency of lands on the first *twenty miles* of the roads now owned by the defendant companies, that it required all of the alternate sections designated by odd numbers within both the six and fifteen mile limits fixed by the Act of Congress, to furnish the complement accruing to the State under said Act, and the same were all subsequently certified to the State, and embraced in the schedules annexed to the bill.

See record, p. 140.

So that in July following the grant, the lands which we seek to follow in this action, to-wit: one hundred and twenty sections of land, applicable to each of said roads, which we claim the Territory, by the true intent and meaning of said Act, was authorized to sell in advance of construction, were identified, and, by the agreed statement of facts, are admitted to be the same set forth in the schedules annexed to the bill. (The Act of 1864, section four, provided that on the completion of ten miles of road a deed of the one hundred and twenty sections which the State might then be entitled to should be conveyed to defendant companies, and the seventeenth and eighteenth sections of the agreed statement of facts states that when the companies had completed ten miles, the lands were conveyed, and are the same lands described in the schedules attached to the bill of complaint.)

Record, p. 138.

c.—The defendants profess to rely upon the case of *Rice vs. Northwestern Railroad Company*, 1 *Black* 358, as an authority for the position that no title passed to the Territory by the terms of the Act of Congress.

The case has no application. The grant not only provided in that case in language (upon which great stress is laid, because similar to some of the language contained in the present grant) that the lands thereby granted should be exclusively applied in the construction of the road for which it was granted, etc., and should be disposed of only as the work progressed, but also in express terms declared,

"*that no title should vest in said Territory of Minnesota, nor should any patent issue for any of the lands until a continuous line of twenty miles of road should be completed through the lands thereby granted,*" instead of providing, as the present Act does, "that one hundred and twenty sections may be sold, and when any twenty continuous miles of road is completed, *another* quantity of one hundred and twenty sections may be sold." *See Schulenberg vs. Harriman, cited ante*, in which the distinction between that case and a case arising under the present grant is clearly demonstrated by this Court.

Prior to the execution of the trust reposed in the Territory by its terms, Congress repealed the Act, and we need not quarrel with the decision of the Court, even if the Act had much more closely resembled the one in controversy here than it does, in holding which was the only question under discussion, "that the Territory acquired nothing under the Act of Congress but a mere naked trust or power to dispose of the lands therein specified, and to apply them to the use and purpose therein described."

This proposition being admitted, it was not controverted in that case by counsel, and was held by the Court as a necessary corollary flowing from it, that Congress could at any time repeal the Act creating the trust before it was executed, and withdraw the power.

We concede here, that, in the first instance, and by the terms of the Act of Congress, the Territory was a mere trustee, and the question is not whether, before any act

done in the execution of the trust, Congress might have repealed it, but whether, having in part executed the trust and vested a portion of the grant in the grantees, they, or those claiming under them, can, by the action of the State, be divested of such rights. And the answer to this question depends purely upon whether the trustee, in the execution of the trust, conformed to the provisions of the Act creating it.

In other words, whether the Act of the Territorial Legislature, assuming, for the present, that it vested the absolute title of one hundred and twenty sections of land, within a continuous length of the first twenty miles of each road as located, was in conformity to and within the provisions of the Act of Congress.

Before examining that Act, we notice the points made by the defendant on the construction of this Act, in the Court below.

"It is clear, it was said by defendants' counsel, that one hundred and twenty sections were authorized to be sold, to aid in the construction of the first twenty miles, but only as the work progressed; not before the line of road was located, not before work commenced, not upon any condition subsequent to be performed, but 'as the work progressed;' not to devote the lands to the purpose of grading the road, or to the partial building of some portion of the line, but to the construction of a completed road."

"And, further, that if power to sell existed, it conferred no power on the company or the State to mortgage lands

to provide funds to inaugurate the enterprise, but only to sell."

Say the counsel: "A power to sell does not include a power to mortgage." Perhaps not, necessarily, but neither is the affirmative of the proposition necessarily true. The construction of the act must be arrived at and the extent of the power in every case settled by the language employed in the whole act, aided by the situation of the parties and of the property, the usages of the country on such subjects, the acts of the parties themselves, and every other circumstance as having a legal bearing and throwing light on the question.

Le Roy vs. Beard, 8 *How* 451.

Zane vs. Kennedy, 73 *Penn.*

It is always a good execution of a power if it pursues the intent and design, though not according to the direct terms of it.

Williams vs. Woodard, 2 *Wend.* 486.

The Supreme Court of Minnesota say, that by the practical construction put upon the Act of Congress by the authorities of this State and of the Federal Government, the sale of lands provided for in said Act, is made by conveying the same to the corporation owning the road.

State of Minnesota, ex rel. vs. The Southern Minnesota R. R. Co., 18 *Minn.* 51.

And the practical construction put by every department of the State government, from its earliest contemporaneous acts down to the present, has always been, that one hun-

dred and twenty sections for each of the roads and branches, provided for in the Act of Congress, were placed at the disposal of the Territory, to enable it to launch the enterprise, which was subject to the absolute disposal of the Legislature of the Territory, to whose good faith and interest in the development of these enterprises, so essential to the growth and prosperity of the Territory, Congress trusted, enjoining upon it the mandate that the funds thus realized should only be applied to the construction of the railroad in aid of which the lands were given, by the Legislature. The framers of the constitutional amendment could have had nothing else in view, when they required a trust deed from the companies participating in the loan of state credit, of the first two hundred and forty sections of land which they should be authorized to sell. The Minnesota and Pacific Railroad Company had received a grant with power to construct two of the land-grant roads, to each of which appertained one hundred and twenty sections of land which the Act of Congress had declared, unrestricted by any limitation, might be sold, and the Southern Minnesota Railroad Company, the grant of two, being the two roads in controversy here.

The Act of 1864, under which the defendant companies claim title, as in each act of the series of annual acts which the legislature passed, commencing in 1861 and ending in 1864, in regard to these roads, provided that upon the completion of ten miles of road, and *not before*, the company should be entitled to receive a deed of one hundred and

twenty sections of land; a manifest departure from the Act of Congress, whether the defendants' version or ours is adopted, as by the former construction, no land would pass until twenty continuous miles were completed, and by ours the company would be entitled to the land in advance of construction of *any* road; the legislature manifestly adopting and acting upon the latter construction, attempted, for further security, to postpone the vesting of this one hundred and twenty sections until ten miles should be completed, and hence the significance of the words "and not before" used in that connection.

By the Executive.

In an official opinion of the Attorney General, it is said:

"It would seem from the provisions of the Act of Congress that the company was entitled to one hundred and twenty sections, at least, before commencing operations, one hundred and twenty sections upon completing twenty miles, and one hundred and twenty sections upon a completion of a further twenty miles, which would be equivalent to three hundred and sixty sections upon the completion of forty miles of road."

See Opinions of Att'y Gen'l Minn. p. 840.

See also opinions on pp. 447-8 *and* 455.

In the latter, that this is the settled construction, both of the Executive Department of the State and of the Secretary of the Interior, seems to be assumed.

(We note in passing an opinion of the same officer, referred to by the counsel for defendants in their argument

below, simply to say that that opinion was not on that point, and the assumed holding of the Land Department, which was used as an illustration to the argument upon another subject contained therein, was an error.)

By the Judiciary.

The Supreme Court say, in a decision in regard to the companies defendant here, "with the exception, perhaps, of one hundred and twenty sections, *which were to be sold in advance of construction*, the lands granted were to be sold for each of said roads and branches, in quantities not exceeding one hundred and twenty sections for each twenty continuous miles of road completed."

State ex rel. vs. Southern Minnesota Railroad Company, 18 *Minn.* 50.

An examination of the Act of Congress in the light of surrounding circumstances, the usages of such enterprises, the uniform policy of the government, the general state of the country, and the objects to be subserved, would seem to leave no doubt as to its true construction.

The long cherished policy of the national government in regard to the public lands, has been their employment in developing the resources and encouraging the infant settlements of the great and rapidly growing States, within whose territorial limits they are located, rather than for the purposes of revenue.

For many years, and, indeed, from a period almost coeval with the era of American railway enterprise, the application of a moiety of the public lands within certain definite

limits, to the aid of these most important internal improvements, has been a favorite policy.

The old ideas and the old laws which governed emigration and territorial development, have been by this policy revolutionized.

Formerly the advance guard of civilization was led by the pioneer, with his ox team, wearily plodding over the untrodden prairie, while the costly highway, which the daring genius of modern discovery had made possible only to the crowded communities of the Atlantic Coast, awaited the period when long years of patient toil upon the lonely and almost inaccessible frontier should have resulted in the growth of cities, towns, and villages, and the conversion of the virgin prairie into fields teeming with agricultural wealth, and the demands of a rising commerce and agriculture should justify the outlay by the promise of a speedy reimbursement and a sure and immediate income.

But by the policy of the government in regard to the public lands, this state of things has been exactly reversed. The whistle of the locomotive now startles the savage upon the remotest frontier, and the engineer and the track-layer have taken the place of the emigrant in the van-guard of the tides of emigration which are constantly following each other in a ceaseless westward flow across the continent.

The necessities of modern emigration require, first, the means of rapid transit to the markets of the world. Agriculture, commerce, and manufactures are no longer the hand-maids of the railway, but a line of transportation is

the indispensable precursor to their introduction and development.

The inauguration of this new and, in its inception, radical policy, brought with it the necessary incidents without which its success would have been impossible, and its history in Minnesota is but a repetition of the same policy everywhere.

In 1857 Minnesota was still a territory; but a few years had elapsed since the Treaty of Mendota had opened the entire state west of the Mississippi to settlement. St. Paul, its capital city, was but a village, to which the location of the seat of government gave its chief importance.

Beyond a narrow belt of scattered settlements, connected by a sparsely settled prairie, thinly sprinkled with farmers, who were here and there beginning to open their farms, which fringed the Mississippi river and a still narrower one along the Minnesota, the entire territory was a silent wilderness, unsettled and most of it unsurveyed. In this period of its history, with a view to following the same policy which had succeeded so well in the older states of the Mississippi valley, a railway system was devised which practically was to result in opening, when fully completed, the entire eastern portion of the Territory, which was afterward organized into the present State, to emigration, by making its fertile prairies, its dense pine forests, and rich mineral resources accessible to eastern markets.

As usual in the history of these projects, citizens of the Territory, possessing more zeal for the growth and develop-

ment of the new State than financial resources or credit, were the projectors and incorporators.

Whatever prospects the sanguine hopes of these men might discern for these enterprises in the future, two things were certain.

First, if they were to be inaugurated at all, and to receive any sort of vitality, to say nothing of their actual completion, it must be by means of aid in the form of a land-grant from the national government, as, for many years, the traffic which the resources of the Territory would supply, would not only be insufficient to return any interest whatever on the capital invested, but would be entirely inadequate to defray the running expenses of the road.

And, secondly, that a land-grant, however magnificent, would be a worthless gift until, by the enhancement of values which would so surely follow in the train of a railway, the lands would be saleable at remunerative prices.

Another equally obvious fact was apparent to all who were familiar with the history of similar enterprises. That as the settlement of the country, the building of the road, and the sale of the lands at prices which would defray the cost, were all parts of one general scheme and inter-dependent the one with the other, good financial management would require in the disposition of the land-grant a policy similar to that adopted by the government, (which doubles the price of the alternate sections remaining to it, and thus makes the grant pay for itself by the advancement in values,) of awaiting the enhancement in value and disposing

of them to actual settlers, must be adopted. In other words, that to derive the most benefit from the grant, it should not be disposed of until the completion of the road, and then not at public auction to speculative bidders, but by the organization of a land department, and the sale, in small quantities, on easy terms of payment, to actual settlers.

But while this was the policy which common experience and sound practical judgment in such matters dictated, the exigencies of the scheme and the universal usages of similar enterprises would require an immediate investiture, in the projectors, of some portion of the grant, subject, of course, to such guards against its improper diversion as the wisdom of Congress might suggest, as well as power, as the road progressed, to anticipate the final disposition of the land grant, by using it as a basis of credit and issuing its bonds, secured by a mortgage on the lands, to capitalists who might make advances to build the road, which was and is the established usage of such enterprises known to Congress and every one connected in any way with the project. Under these circumstances the grant was made.

The projected roads, in much of their course, lay through an uninhabited wilderness, and in all their extent through a sparsely-settled agricultural country, where agriculture even had not sprung into vigorous life, and cities and towns, trade and manufacture, were things of the distant future.

The vast areas of wild land which were conferred on the

companies were not, in a State where the unlimited supply far exceeded any present or very near prospective demand, considered of much present value.

But to these lands the builders and projectors of the roads must look, exclusively, for reimbursement.

How? By a forced and absolute sale during their progress, in driblets, as the road progressed, as the defendants claim? Or was it contemplated that the course usually and, indeed, uniformly resorted to by projectors of similar enterprises, of the issuing of bonds and mortgaging the lands, to obtain the necessary funds, and delaying the absolute sale until the lands should share in the enhancement of value expected to result, and then, by the organization of a land department, the sale upon such terms and in such manner as good financial management should indicate?

The language of the Act itself, the surrounding circumstances just stated, and the practical construction placed on the Act by the defendants themselves since their succession to the grant, all afford conclusive answers. The Act provides for sales in complements of one hundred and twenty sections, in sections of twenty miles in length, and is silent as to any other mode of distribution. So that if this standard is departed from, the substitution of any other must rest exclusively in the conjecture of counsel. The defendants themselves have adopted the policy usual in building all land-grant railways, and instead of disposing of the grant, in accordance with the absurd rules for which they contended in the court below, have anticipated sale by issuing

their first mortgage bonds and mortgaging the lands as fast as they were earned by completion of sections of the road. But were the projectors to look to these lands for reimbursement after large expenditures, which, as we have seen, they were in no condition to make?

In the poverty of the incorporators, early settlers of the Territory, to whom the coffers of capitalists were sealed treasures, to which security abundant and undoubted and established credit were the only keys, the most difficult period of the enterprise would be in the beginning.

When a section of twenty miles should be constructed, there would be a tangible property, a basis for security. But how to procure the capital to build the first twenty miles, while the project existed only on paper or in the sanguine, perhaps visionary, dreams of its projectors. This was the difficult and almost the only insurmountable obstacle to overcome and the problem most perplexing of solution, and was solved, as it only could be solved consistently with such reasonable safeguards against the diversion of the fund as would not impair or destroy its efficiency, by the provisions for the absolute investiture of the company with the title to one hundred and twenty sections of land in advance of the construction of each twenty miles of its road. In the light of the surrounding circumstances, the state of the country, and the object to be accomplished, as just passed in review, the language of the Act of Congress seems to be exceedingly clear, even if in the context alone there were any obscurity, and the object and intent of its framers rendered unmistakable.

The Congressional aid, to be worthy of the name, must come in advance of and not after the completion of the section of the road which it is to build; capital makes no investment in railroad building without security in advance.

Congress, in guarding the grant to the extent that the disposition of one hundred and twenty sections alone is left to the good faith of the State, without an equivalent amount of completed railway, has not, perhaps, been guilty of an unwarranted and unbusinesslike confidence in its dealings with a sovereign State.

The clauses bearing upon the intention of Congress as to the first one hundred and twenty sections and the disposition of the lands generally, must be read together, the language, "shall be disposed of as the work progresses," standing alone may mean one thing, and in connection with its qualifying clauses defining "how it shall be disposed of as the work progresses," an entirely different thing. These clauses are:

The second *proviso* of section one.—"The lands hereby granted for and on account of said roads and branches severally, shall be exclusively applied to the construction of that road; (not to any particular part of the road, or to any particular portion of the construction, as the defendants contend; nor does construction necessarily mean completion; grading is as necessary as the iron rails, and is usually and more cheaply done, to a considerable extent, before the track-laying commences, but to the construction of *that road*, for and on account of which said lands are hereby

granted,) and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever."

The clause, "as the work progresses," as here used, is fully defined by the fourth section, which provides in detail the *manner* in which it shall be disposed of "as the work progresses," and no intelligent construction can be reached except by construing them together, section four performing the office of a limitation and qualification of the *proviso*.

"SEC. 4. The land hereby granted shall be disposed of by said State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches, *may be sold;* and when the Governor of said Territory, or future State, certifies to the Secretary of the Interior that any twenty continuous miles of any of said roads and branches is completed, then *another* quantity of land, hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches as have twenty continuous miles completed, as aforesaid, and included within a continuous length of each of said roads and branches, may be sold, and so from time to time, until said roads and branches are completed, and if any of said roads and branches are not completed, the balance unsold shall revert to the United States."

It seems very clear from this language that the intention of Congress, as gathered from it, is exactly what, in the

light of surrounding circumstances, would be the natural mode of accomplishing the result aimed at. It is to be noticed that when the first twenty miles mentioned in the Act are built, the Governor is to so certify, and then another one hundred and twenty sections may be sold; to what does the term "another" refer if not to the quantity which was to be sold before any certificate or any completed road?

But it would seem a work of supererogation to discuss the question of construction, as this Court seems in recent cases to have placed this construction upon a similar Act.

Tucker vs. Ferguson, Oct. Term 1874.

Schulenberg vs. Harriman, 21 *Wal.* 44, where this Court says: "The State, by the terms of the grant from Congress, possessed no authority to dispose of the lands *beyond one hundred and twenty sections*, except as the road in aid of which the grant was made, was constructed. The Act of Congress made it a condition precedent to the conveyance by the State of *any other lands*, that the road should be constructed in sections of not less than twenty consecutive miles each, *id p.* 59. The precise point is also adjudicated in *Railroad Land Company vs. Courtwright*, 21 *Wal.* 310.

Second, that the Act of the Territorial Legislature of May 22d, 1857, vesting the grant in the Southern Minnesota Railroad Company, was, as its title imports, the execution of the trust imposed upon her by the Act of Congress, we freely concede. And that so far as that Act exceeded or transcended the trust powers with which the State was invested by the Act of Congress it is nugatory, we also con-

cede. That the State up to this point was a trustee, and that it was not competent for her to do any act or assume any position inconsistent with the trust, is also admitted.

But it is insisted that the Territorial Act is in exact and literal compliance with the Act of Congress, and conferred upon the Southern Minnesota Railroad Company neither more nor less than the rights granted by that Act.

While it would not have been competent for the Territory, acting as a mere trustee, to have enlarged the rights granted by the Act of Congress in the grant to the company, neither would it have been competent for her to contract them.

In construing, therefore, the rights granted to the State by Congress, we have practically construed the grant by the State to the company.

The various sections of the grant to the company are, as in the case of the Act of Congress, to be construed together.

SEC. 3. Provides that all the lands, interest, rights, powers, and privileges granted to and conferred upon the Territory of Minnesota by the Act of Congress, are hereby disposed of and conferred upon the Southern Minnesota Railroad Company, *subject to the provisions hereinafter set forth and the provisions of said Act of Congress.*

SEC. 7. For the purpose of aiding in the construction of railroads, etc., all the interest and estate, present and prospective, of the said Territory, and future State, in and to all the lands granted by the government of the United States to the Territory of Minnesota, for the purpose of aiding in the construction of the roads herein set forth, by

virtue of the Act of Congress, etc., are hereby granted to and vested in said railroad companies respectively; provided, that said lands shall be exclusively applied to and used by said railroad companies respectively, in the construction of the aforesaid railroads, and *shall be disposed of only in the manner prescribed by said Act of Congress.*

Section twelve, (on which the counsel for defendant seek to make a point by detaching it from its connection with its associate sections of the Territorial Act and from the Act of Congress, and reading it by itself,) is as follows:

SEC. 12. When any continuous twenty miles of either of said railroads shall be completed, it shall be the duty of the Governor of this Territory, or future State, to certify that fact to the Secretary of the Interior, and so from time to time, as often as twenty more continuous miles of said railroads are completed, and said lands shall become the property of the respective companies herein mentioned, in accordance with the provisions of said Act of Congress.

So far from this sectiom derogating anything from the construction already placed upon the Act of Congress, it only tends to confirm it.

It will be noticed how careful the Legislature were whenever they used any language granting the interest of the Territory in the Congressional grant, *either present or prospective*, to declare that the companies should take, subject to the provisions of said Act of Congress. They are constantly referred to that as the measure of their rights. The only *present* interest which the Territory had to dispose of,

or which it could pass by its grant, was the one hundred and twenty sections which it was authorized to sell in advance of construction, and which sale, as the Supreme Court of the State says, is by the practical construction put upon it by the authorities of the State and of the Federal Government, made by conveying the same directly to the corporation owning the road.

See 18 *Minnesota* 51, *cited ante.*

This passed by the force of the language of the Act, and no further action of the Territory was necessary; as to these lands the trust was by that Act executed. But the prospective interest could only be acquired or perfected by a certificate of the Governor that twenty continuous miles of road were completed, which the Act of Congress required: but that act, while making the certificate a condition precedent to the investiture of the State with a perfect title and right of disposition to the second one hundred and twenty sections, could not act upon the Governor or confer upon him authority to execute it. This authority must come from the legislature, and this section was intended to give that authority to just the extent that the Act of Congress made it necessary. So that section twelve, so far from being inconsistent with our theory, only tends to show how entirely in harmony is the Territorial Act, in all its parts, with the Act of Congress.

It will be noticed that in the case of *Schulenberg vs. Harriman, cited ante,* which may, perhaps, be relied on by defendants on this point, the language of the Territorial Act

differed from that under consideration here, in that the words of transfer were qualified by the clause, "that upon the construction and *completion of every twenty miles of said railway*, the said company shall acquire the fee-simple absolute in and to all that portion of the land granted to the State appertaining to the portion of the railway so constructed and completed." The company did nothing under the grant, and neither the company nor the State had made or attempted to make any use of the first one hundred and twenty sections, *id. p.* 58, *and see Railroad Land Company vs. Courtwright*, 21 *Wal.* 310.

THIRD. Now, up to this point, the State had *quoad* these one hundred and twenty sections, acted as trustee, but with the exercise of the power of absolute disposition, her relation to these lands in a trust capacity ceased. The absolute ownership was vested in the Southern Minnesota Railroad Company, to dispose of for the purpose of obtaining the funds to launch the enterprise, *ex necessitate rei*, an absolute and indefeasible title. True, it was under an obligation to apply the proceeds to the building of the road, and, perhaps, a failure to do so would have enabled the public authorities to seek redress against the company or follow the funds in the hands of the officers, but, like all trusts of a similar character, the title to the lands in the hands of a *bona fide* purchaser would have been unimpeachable.

As to the remainder of the lands, that the State could not put herself in a postion in relation to the company inconsistent with the trusteeship, may be safely conceded.

Not so much from the intervention of any equitable rule, as because the legal title to the lands and the right of absolute disposition did not and could not vest until the performance of a condition precedent, and when that was performed, the trust was performed as to them, they passed absolutely to the grantees of the State, and she or any one else could then deal with the company as to them.

But it is claimed that the obligation of the State as trustee to see that the proceeds of the one hundred and twenty sections of lands sold, were applied in good faith to the construction complete in all respects, still remained.

There never was any obligation to apply the first one hundred and twenty sections to *completed road;* the language of the Act of Congress is, "shall be exclusively applied to the construction of *that road* for which granted," *i.e.*, no lands given in aid of one railroad shall be donated to any other. It is true that before the second one hundred and twenty sections would accrue, twenty miles of road must be completed, but if the company deemed it more expedient to apply the entire proceeds of the first one hundred and twenty sections to grading, and with such a basis for security as such grading would afford, to issue its first mortgage bonds to purchase and lay its iron rails, no possible objection to such proceedure occurs to us, its only effect being to postpone the vesting of the second installment of lands. The *procrustean* bed upon which the theory of counsel would place this grant would so effectually hamper and embarrass operations under it as practically to defeat its entire object and purpose.

To claim that the specific one hundred and twenty sections first sold must be applied to complete and must complete exactly twenty miles of railroad, evinces as blissful an ignorance of the laws of finance as of those of construction.

It must be applied to the construction of the road, and as the graded road-bed is a somewhat material part of the construction of a railroad, and is usually by railroad builders not versed in the law built before the track is laid, and, indeed, much more economically done to a considerable extent before the track-laying commences, what possible application could have so exactly carried out the intention of Congress, or how so practically could it have been accomplished, (if it be true that the State was bound as trustee to see to the application of the proceeds of the land,) as by the State advancing the funds, or becoming security for them in the market and advancing them to the company in installments, upon the certificate of competent engineers that corresponding sections of the road had been properly graded?

If the company had disposed of these lands to other parties, as it might, and the directors had squandered the moneys, the grantees' title could not have been questioned, yet the money might have been misapplied beyond all hope of recovery. But the State in reality took charge of the whole matter, and saw to it that every acre of these lands was properly applied. Instead of assuming a position antagonistic or in any way inconsistent with her duties

as a trustee, she did even more than could have been required of her. But whatever complaints the government of the United States might have made (and if that makes none, it is difficult to see how these defendants are in a condition to urge them; indeed, much of the defence in this case is based upon objections which no one but the United States is in a condition to urge. *See Schulenberg vs. Harriman*, 21 *Wal.* 44) that the funds were mis-applied, yet here not only have the lands been, by the sale authorized by the Act of Congress, placed outside of the trust, not only has the State taken the most cautious measures to insure the application of the fund to the building of the road and so meet the most extended views of her duty in the premises, but it is an admitted fact that every dollar of the funds received from the pledge of these lands, has been faithfully applied to the construction of the road, and the result is fifty-seven and a half miles of graded road-bed done by the plaintiff, and for which he holds nothing but his lien in equity upon these lands, and the State has not only assumed to divert the lands themselves from the original purpose for which they were pledged to her, viz: the creation of a fund to provide for doing this very work, but has transferred the work also, both the graded road-bed and the lands, over to these defendants as a splendid gratuity.

Surely the relation of the State to the lands as trustee ceased when the lands were not only vested in the company, but were faithfully appropriated by it as security for the construction of the road, and there-afterwards there could be no

possible objection to her assuming another trust and undertaking to see the lands applied to reimburse those who had advanced their money to build the road upon the faith of such security. If the plaintiff, instead of the intervention of the state bonds, had graded the road and taken the lands in payment, or if the State, without the intervention of the company, had undertaken to build the roads herself and had sold the lands and applied the proceeds in the manner in which we now seek to have them applied, will it be contended that the title of these lands could have been disturbed in the hands of the purchaser, in case the enterprise had been abandoned at the stage at which it appears to have been?

See Railroad Land Company vs. Courtwright, 21 *Wal.* 310.

But there is not the shadow of a distinction in principle, nor does the State, by enforcing her securities, put it out of her power to execute or in the least affect the trust due to the general government.

All that the Act of Congress provided was that the land unsold, if any part of the road was not completed within the time therein specified, should revert to the United States. This was an inexorable law of the grant, independent of any discharge by the State of her duties in the premises, and which no act of hers could affect.

The franchises and graded road-bed are in no sense a part of the *trust* property created by the Act of Congress, or included in the Congressional trust. The Act of Congress granted the lands upon certain conditions, and the only

penalty for a non-compliance was a forfeiture of those unsold, pursuant to its terms, at the expiration of ten years. The mode and means of building the roads were left wholly to the discretion of the State. Any embarrassment which she might experience by reason of the franchises being encumbered by mortgage, in building the unbuilt portion of the road, in case the enterprise was abandoned by the first company, could be easily avoided by the exercise of the power of eminent domain by which, by paying the mortgagees their value, they could be condemned and vested in a new company for the purpose of continuing the work.

The argument of the defendants goes to the extent of a denial of the power to mortgage at all the franchises of a land-grant railroad. Such a doctrine would, as we have seen, not only paralyze all such enterprises, but would be at variance with the universal policy of railroads similarly situated.

Upon the failure of the first company to complete the road, her duties as trustee under the Congressional grant surely required of her nothing more than to execute that portion of the trust remaining undischarged, and to see to it that the remaining lands not already applied in the execution of the trust, should be faithfully applied to that purpose. She would resume her trust duties at the point where they ceased, but not re-execute that part already executed, and that, too, by divesting vested rights.

The bold claim here advanced is, that every person deal-

ing with the original company, even though secured by its first mortgage bonds, in building or grading the first twenty miles of its road, did so at the hazard of losing all redress and all claim upon its property, in the event of its failure to lay the rails upon the graded section or to build the succeeding twenty. It is true, as the counsel for defendants suggests, "that the prime object of both state and national governments was to carry out a well considered and important public policy by the speedy completion of a comprehensive railway system," and it may safely be conceded that the chief and primary object of the loan amendment was the promotion of that general design. But it surely was not the design to promote these objects at the expense of those who should contract to do the labor and furnish the means; the bounty was to flow from the government, and not to be abstracted from the pockets of the contractors, and the enforcement of the provision for their security can hardly be regarded as inconsistent with that public policy.

It may be an important scheme of municipal policy for a city to erect commodious and elegant buildings for the accommodation of its common schools; nevertheless, if the work of erection ceased, when half completed, for want of funds to go on, it would be a novel theory to advance that all mortgages on these buildings given to the contractors who erected them, were void, because to enforce them would prevent the city from re-mortgaging them to others to insure their completion. The foreclosure of a mortgage which is given as incident to the principal object of any enter-

prise to raise means for prosecuting it, we suppose, would always tend to obstruct or embarrass the attainment of that object, and yet we have never heard that reason urged against the validity of such security. As a matter of fact, the lands appertaining to that portion of the road which remained to be constructed, are protected by the Act of Congress, and we do not question defendants' title thereto.

To conclude all that need be said on the relation of the State as trustee to these lands, under the Congressional grant, it is to be noticed that the grant by the State to the old company was in May, 1857. In October, 1858, the trust deed of the two hundred and forty sections to the State was executed and the mortgage to trustees on the lands, roads, and franchises, to secure the first mortgage bonds of the companies, on the 16th of May, 1859.

See agreed statement of facts, p. 134-5, *record.*

During the intervening period, the company had located the line of its road, completed its surveys, contracted with the defendant to do the grading, and the work had been completed in the fall of 1858, or the spring or early summer of 1859.

See plaintiff's testimony, p. 96, *record.*

At this stage of the work, suppose the company had appropriated the two hundred and forty sections of land to the plaintiff in payment for his work, would a subsequent failure to go on have defeated his title? (*See Railroad Land Company vs. Courtwright, cited ante.*) Instead of this, the company, to raise money to reimburse the plaintiff for

his work and to continue it, mortgaged them back to the State, who had, as to these lands, discharged herself of the trust two years before, and was then under no disability to assume another fiduciary relation to the lands and the holders of its bonds. But it is urged, it does not appear that, as to the graded road-bed, the old company had acquired any title to the road-bed or the land on which plaintiff did the work. This is not true, in point of fact. It does appear, by the only testimony in the case, (*see plaintiff's testimony, p.* 97, *record,*) that the right of way was acquired by the old company, and the fact that years after that company had ceased to exist, and its records and files were, if in existence, out of the State, the defendant companies were unaware of the fact, and suffered themselves to be imposed upon by the land owners, and consented to purchase and pay for the right of way over again, which is all that is admitted by the *agreed statement of facts, p.* 140, *record,* would have no bearing upon this case, if a want of title to the right of way would in any case be material.

FOURTH. *a.*—The relation of the State to the holders of the bonds.

The exact position of the State in relation to the state bonds is that of an *accommodation maker* of negotiable paper.

Notwithstanding the form of the contract, the State is simply a surety, and the original Southern Minnesota Railroad Company, which endorsed the bonds, the principal. Hence, upon the familiar doctrine of subrogation, the assignment or conveyance by the Southern Minnesota Railroad

Company, the principal debtor, of any property to the State, the surety, to indemnify her from liability on the bonds, and *to provide a fund for their payment*, creates a trust in favor of the plaintiff, the creditor and holder of the bonds, and appropriates irrevocably the property so conveyed as a fund for the payment of the debt.

This trust is created for the benefit of the creditor, for the better security of his debt, and he is entitled to affirm the trust and enforce its performance, although he did not act upon the credit of the security in the first instance, or even know of its existence.

The doctrine springs from a principle of natural equity that to prevent the surety from being first harassed for the debt or liability, and then turning him around to seek redress from a collateral security given by the principal debtor, a court of equity will authorize and even encourage the creditor to claim through the medium of the surety, all the rights he has thus obtained, to be exercised for his benefit and in discharge of his obligations.

1 *Leading Cases in Equity*, 163-4.
Moses vs. Murgatroyd, 1 *John. ch.* 119.
1 *Story Eq. Jurisprudence, sec.* 502-638.
Haggerty vs. Pittman, 1 *Paige ch.* 297.
Phillips vs. Thompson, 2 *John. ch.* 418.
Maure vs. Harrison, 1 *Eq. Cas. Abr.* 93.
Curtis vs. Tyler, 9 *Paige ch.* 431.
Pratt vs. Adams, 7 *Paige ch.* 627.
Bank of Auburn vs. Thorp, 18 *John.* 504.

Kip vs. Bank of N. Y., 10 *Johns.* 62.

Russell vs. Clark's Ex's, 7 *Cranch* 98.

The defendants rely upon the cases of *Homer vs. Savings Bank of New Haven*, 7 *Conn.* 478, and *Ohio Life Ins. Co. vs. Reeder*, 18 *Ohio* 35 *and* 46.

But an examination of these cases will show that they are conclusive in our favor in this action.

The first lays down as the acknowledged rule of law, that when collateral security is given or property assigned for the *better protection or payment of a debt*, it shall be made effectual *for that purpose*, and that not only to the *immediate party to the security, but to others who are entitled to the debt.* And to make them thus effectual, a court of chancery will lend its aid, and the reason is, that *such is the intent of the transaction*, and says, "They are trusts, (says the late Chancellor Kent, in the case already cited,) *for the better protection of the debt, and a court of chancery will see that they fulfil their design.*"

In the Ohio case the court said: "Now, it will be seen that these mortgages are not *for the purpose of securing the complainant's claim, not for the purpose of raising a fund out of which the debt was to be paid. If so, a court of chancery would hold the mortgagee a trustee for complainants, and would subject the property to the accomplishment of the object of the trust.*"

The court, then, after admitting this general doctrine, proceeded to state the cases in which the security is given, not for the purpose of raising a fund for the payment of the debt, but merely as a personal indemnity to the surety,

and says, that in *that* case, when the surety's liability has become absolutely fixed and his principal has become insolvent, and cases of a similar character, where a resort to his securities becomes absolutely necessary, other resources having failed, there appears to be great propriety in a court of chancery permitting the creditor to proceed directly to appropriate such security to the payment of his debt. It prevents circuity of action, the surety is better indemnified, not being disturbed unless his securities are insufficient, and the creditor has the benefit of having his claim satisfied." Even this rule of law would sustain this action, even if the security was purely personal to the surety, and not a fund for the payment of the debt.

The principal, the old Southern Minnesota Railroad Company, is insolvent, (*see record, p.* 137,) and the liability of the State as to third persons, she being an accommodation maker, is fixed.

But that is not this case.

The case at bar, if ever a case did, comes squarely within the rule which is established by a unanimous accord of the authorities, that when security is given to a surety for the purpose of raising a fund out of which a debt is to be paid, and for the better protection of the debt, a court of chancery will see that they fulfil their design.

Or, in the language of this Court, in *Russell vs. Clark's Ex's*, 7 *Cranch* 69: "If a claim is to be satisfied out of a fund which is accessible only by a court of chancery, application may be made in the first instance to that court

which will not require that the claim should be first established in a court of law."

The rule that a party must first exhaust his remedies at law, as by showing a judgment obtained, insolvency of maker or surety, and kindred instances, only applies to cases where, by reason of the failure of a legal remedy, the party is driven into a court of equity to seek an equitable remedy for a legal right, but has no sort of application when the plaintiff's rights which he seeks to enforce are not legal but equitable purely. The enforcement of trusts and the pursuit of the trust fund is peculiarly a matter of equitable cognizance, of which the courts of law have no jurisdiction.

If there be a trust fund established here of which the plaintiff is *cestui que* trust, no matter how responsible the surety or the principal debtor may be, (though the failure of the State for seventeen years to meet her negotiable paper would, in the case of an individual, be regarded as pretty strong evidence of insolvency,) he is not bound to substitute their responsibility for his equitable rights in the trust fund.

As to the exact nature of the transaction whereby the State obtained these securities, we can only look to the provisions of the constitutional amendment itself, and the act providing for the details and manner of enforcing the provisions, as whatever vitality was possessed by the securities delivered to the State, pursuant to them, is entirely dependent upon whether their terms were complied with.

An examination, however, of the trust deed of the two hundred and forty sections of land and of the mortgage to trustees to secure the first mortgage bonds delivered by the company to the State, will show an exact compliance, and they in all respects conform to the requirements of the constitutional amendment and of the Act of 1858 passed to carry its provisions into effect. It will be seen that in no event was the State to be called upon to pay one dollar, but that the company was to and did make its bonds payable sixty days before those of the State, and was to cause each installment of interest and principal to be paid into the hands of the Governor, in order that the State with these funds might meet the forthcoming installments accruing due on the state bonds, and the entire language seems to be used with reference not so much to any direct liability which it was supposed the State would ever be required to meet, but with a view to provide a fund to be placed in her hands to be by her applied to the payment of the holders of state bonds, as they matured. "The state bonds shall be signed by the Governor, sealed, etc., payable to the order of the company and transferrable by the endorsement of the president. Each company shall make provision for the *punctual* payment and redemption of all bonds issued to it, and for the *punctual* payment of all interest which shall accrue thereon, *in such manner as to exonerate the Treasury of the State from any advances of money for that purpose*, and as security therefor, the Governor shall demand and receive from each of said companies, before any of said

bonds are issued, an instrument pledging the net profits of the road for the payment of such interest." "A conveyance to the State of the first two hundred and forty sections of land, *free from prior incumbrances*, which said company is or may be authorized to sell, in trust, for the better security of the Treasury of the State from loss on the bonds, which said deed of trust shall authorize the Governor and Secretary of State to make conveyances of title to all or any of such lands to purchasers agreeing with the respective railroad companies therefor. Provided, that before releasing the interest of the State to such lands, such sale shall be approved by the Governor, *but the proceeds of all such sales shall be applied to the payment of interest accruing upon the bonds, in case of default of the payment of the same, and as a sinking fund to meet any future default in the payment of interest and the principal thereof when due.*"

(Is the English vocabulary copious enough to furnish any language more apt and exact, to express an intent to create in the hands of the State out of these two hundred and forty sections of land, a fund solemnly and sacredly devoted to the payment of these bonds and for their better security?)

But the amendment proceeds:

"And as a further security, an amount of first mortgage bonds on the roads, lands, and franchises of the respective companies, corresponding to the state bonds issued to it, shall be transferred to the Treasurer of the State. And in case either of the companies shall make default, the Gover-

nor shall proceed in such manner as may be prescribed by law, to sell the bonds of the defaulting company, or the lands held in trust, as above, or may require a foreclosure of the mortgage executed to secure the same."

The Act concerning land-grant railroads, passed Aug. 12, 1858, by the same legislature that framed the amendment, and being laws *in pari materia*, they are to be construed together, (as well as the subsequent law of 1860 authorizing the foreclosure,) provides: "Each and every railroad company, etc., *shall make due provision for the punctual payment of the interest and the final redemption of the Minnesota State Railroad Bonds, and to this end shall provide and arrange that semi-annual payments of interest and final payments of principal of the first mortgage bonds of such company transferred to the State, etc., shall mature and be payable at least sixty days before the maturity of the principal or interest of the state bonds, and the interest and principal of the railroad bonds shall be payable at the maturity thereof into the Treasury of the State, together with such amount as may be necessary to pay all exchanges or expenses in the payment of the ensuing installments of the interest or principal of the state bonds*, and shall further make provision that all expenses or charges incurred to carry out the object of the constitutional amendment shall be paid, etc., and shall not be chargeable to the State.

"SEC. 2. Whenever any default shall occur in the payment of interest or principal of the railroad bonds, *so that no provision shall be made by the company for the ensuing payment of the interest or principal of the state bonds, sixty days*

before the maturity of any installment of interest or final redemption of said state bonds, the Governor shall immediately proceed to provide for such payment, and to indemnify the State for such payment or responsibility by a sale of a sufficient amount of the bonds of the defaulting company, or by sale of the lands pledged, or foreclosure of the mortgage or trust deed, or by all or any of such means of indemnification, etc."

One can easily imagine a capitalist, solicited to invest in the state bonds, objecting to the Governor that the State was but just emerging from a territorial condition, that much the greater portion of her area was still an uninhabited wilderness, that in the absence of any means of enforcing the obligations of a sovereign state in the courts, and the not impossible contingency of repudiation, the bonds would carry with them, in monetary and financial circles, no credit, and receiving the answer from the Governor (pointing to the language just quoted) that the State of Minnesota was not merely the maker of these bonds, but that the Governor held in trust for their payment by the company, abundant security devoted as an express fund to that purpose, and which the constitution, upon the first default, required to be appropriated to the payment of them, and any surplus to be set apart as a sinking fund for the remaining installments as they should mature, and supposing the security adequate, it is difficult to conceive why such an answer would not have been a convincing one.

b. But it is claimed that the trust deed of the two hun-

dred and forty sections of land which alone we are pursuing in this action, and which the constitutional amendment required should be transferred to the State free from all incumbrances, became merged in the title which the State acquired under the foreclosure, if we understand the argument of counsel in the court below. This claim merits no answer.

This deed was made to the State of the first two hundred and forty sections of land which the company was or should be authorized to sell, and these are by the case identified as the lands described in the schedules to the complaint. In 1864 the State by the Act of that date authorized the Governor, when the defendant should complete ten miles of each road, to convey one hundred and twenty sections to each road, which the State should then be entitled to, (being, of course, the one hundred and twenty sections which she was authorized to sell in advance of construction, for she was entitled to no other,) and it is admitted that the Governor exercised this power by conveying the lands described in the complaint, which were selected, approved, and certified by the Secretary of the Interior in 1860, and which all parties have agreed and do now agree by the pleadings to be the one hundred and twenty sections authorized to be sold in advance of construction. As to the Southern Minnesota Railroad Company, the identification was not doubtful, as the entire grant fell short of the one hundred and twenty sections. (*See allegations in complaint and admissions in answers p.* 14, *folio* 40-43, *and pp.* 36-7, 46-7 *record*, 14*th*, 17*th*,

and 18th paragraphs, agreed statement of facts, p. 138, *record, sec* 4 *ch.* 1, *sec.* 2 *ch.* 2, *Act of* 1864, *pp.* 235-241, *record,*). A description of them as such was sufficient, under the maxim, *id certum est quod certum reddi potest,* or if otherwise, the deed contained a covenant of further assurance, and when prior to the foreclosure in 1860 the Secretary of the Interior certified the lands described in the complaint to the State, she could, if her legal title had not passed by the trust deed, enforce specific performance of the covenant. In either event, the control of and entire equitable interest in these lands was held by her in trust for the payment of the state bonds, and this trust fund the plaintiff can follow in a court of equity. The instrument was executed in October, 1858. The trust deed or mortgage to trustees to secure the first mortgage bonds of the company was executed in May following, and contained an express recital of the execution to the State of the deed of two hundred and forty sections, free from incumbrances.

Under this mortgage to trustees, the State took an equitable interest, in common with all other holders of first mortgage bonds of the company.

To say that the foreclosure of a second mortgage by a party holding a part (or, indeed, the whole interest in it, for it is immaterial which) operates to merge or cancel prior conveyances of the entire interest in a portion of the same property, whether absolute or conditional to the party foreclosing, is a proposition which we conceive requires no argument here.

road mortgage foreclose it, and a third party bids in the property at public sale, or one of the bondholders even, the money paid for the property, *i.e.* the purchase price, stands in place of the property. The purchaser, of course, takes a good title to the property, and the proceeds of the sale are distributed among the bondholders.

But the counsel forgets that the plaintiff is not such a bondholder.

Suppose, in the case we have instanced, an executor or administrator was the holder of a large majority of the first mortgage bonds secured by a railroad mortgage. He attends the sale and, in default of higher bidders, bids off a valuable railway for a trifle; can he then turn around to the heirs or legatees of the estate for which he is administrator and say to them, "I am the owner of this property and you must be content to take what I bid for it, for your bonds?" Or take a familiar example under the statutes of Minnesota, providing for the foreclosure of ordinary mortgages by advertisement.

Suppose a private mortgagee is surety on a note given by his mortgagor, and simply holds a note and mortgage as a fund out of which, by arrangement between the parties, he is to realize the amount of the debt and pay the, creditor, in other words, that the mortgage has been appropriated, by agreement, as a fund to pay that indebtedness.

He is manifestly a trustee for the creditor, who would be entitled to be subrogated to his rights in the security. The surety, (*i.e.* the State, in this case,) has paid nothing on the indebtedness.

He forecloses on the property and bids it in for the amount of the mortgage debt; but as is usual in cases of bids by the mortgagee, pays nothing (and what makes the proposition of the counsel for the defense more audacious in this case, is that the bid of the State was a nominal one, and no appropriation was ever made by the State to pay it, as was conceded in the court below, and as the public acts and records in the State of Minnesota show.)

By the foreclosure in the case we have supposed, the surety simply cuts off the equity of redemption, and holds the property absolutely. Are the relations between the creditor and the surety changed? No principle is better settled than that a purchase by a person holding a fiduciary relation is voidable at the election of the *cestui que* trust, who may elect to confirm it or follow the property in specie in the hands of the trustee, or any one taking from him, with notice or without consideration.

1 *Leading Cases in Equity*, 215-218.

So the trustee of a junior mortgagee can not buy in the mortgaged premises for his own benefit, on the foreclosure of a prior mortgage, to the prejudice of the second mortgage which he holds in trust for others.

Van Epps vs. Van Epps, 9 *Paige ch.* 238.

And in this case the State could not divest itself of its fiduciary character, nor disembarrass the property of the trust by turning its mortgage title into an absolute one.

See Flag vs. Mann, 2 *Sumner* 520.

The rule of equity, says the Chancellor, in *Van Epps vs.*

Van Epps, which prohibits the purchase by parties placed in a situation of trust and confidence, with reference to the subject of the purchase, is one of universal application embracing all who come within its principle. Which principle is, that no party can be permitted to purchase an interest in property and hold it for his own benefit, when he has a duty to perform in relation to such property which is inconsistent with the character of a purchaser on his own account and for his individual use.

See 1 *Story Eq. Juris.* 321-2.

4 *Cowen* 717.

But general principles of equity aside, the constitutional amendment, the Act concerning land-grant railroads, of 1858, and the Act authorizing the foreclosure of 1860, which latter simply authorizes the Governor *in his discretion*, (if such action is made necessary in default of other bidders, or to prevent the property from being sacrificed,) to bid in the property in the *name* of the State, (not *for the benefit* of, but in the name of the State merely,) are all to be read and construed together as part of one general scheme, and when so read, it is clear that the impress of the trust remains and was intended to remain throughout the whole.

FIFTH. *a.*—But it is claimed that the State acquired and held all the lands, property, and franchises, by virtue of the constitutional forfeiture, which, it is claimed by defendants, operated to override the trust deed of the two hundred and forty sections, the mortgage to trustee, and its foreclosure, and, in short, all the securities held by the State.

In other words, that the State stood, in her relation to these securities, in the precise condition that a private person holding these franchises and properties by assignment from the companies would be in, and the forfeiture would not only divest the title of the companies, but their assigns as to all lands of which the absolute ownership and right of control had not vested irrevocably in the companies.

This proposition has at least the merit of being a bold and radical theory.

It will be remembered that the loan amendment, after providing with great care for the securities and for the payment of the bonds to be issued pursuant to its provisions, closed with a proviso of this character, viz: Provided, that in consideration of this loan of state credit, the companies which may accept the bonds of the State, shall, as a condition thereof, each complete not less than fifty miles of its road on or before the expiration of the year 1861, etc., and any failure shall forfeit to the State all the right, title, and interest of every kind whatsoever in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them *constructed*, and a fee-simple to which has not accrued to said companies by reason of such construction, etc.

The same novel rules of construction which distinguish the defense in every branch of this case, are sought to be applied here.

That any assignment by the company of its entire inter-

est as a mortgage to trustees, for purposes having no reference to the loan amendment, would, as to lands the title to which had not become absolute, be subject to the forfeiture, may be conceded.

But that this forfeiture clause, contained in the very Act which had already provided, with such abundant caution, for the vesting the title to the same property in the State as a fund for the payment of the bonds therein provided for, is to be construed so as to overturn and make void the entire scheme, upon the occurrence of the very contingency which the framers of the amendment were anticipating and guarding against, is simply astounding.

If the companies should make default in the early installments, and it was at that point, in the weakness and poverty of the incipient stages of the enterprise that they would be likely to fail, if ever, then it would follow, as a financial necessity, that they would be unable to complete the number of miles named within the specified time.

That all the securities upon which the State and the investors in state bonds relied, were to be thus swept away by the destructive potency of an agency which was thus hidden in the clauses of the amendment, certainly will never be presumed, until a resort to all the recognized rules of construction has failed. The true construction seems sufficiently manifest by construing the entire amendment together, and so that all its clauses shall stand and be operative and produce their natural effect, in accordance with the maxim, *ut res magis valeat quam pereat*, viz.: that all the in-

terest remaining in the company, and which was not to pass to the State by force of the previous provisions, should be forfeited by a failure to build fifty miles of the road on or before the expiration of 1861.

a. But as to the two hundred and forty sections which the company was authorized to sell in advance of construction, and which passed to the State under the first trust deed, if we are right in our previous views of the time when the absolute interest in that land vested in the company, it will be conceded that the forfeiture could not affect the title to that.

It had passed by force of the Act of Congress; the trust *quoad* that had been executed, and the State would have no power, if it had possessed a disposition, to declare a forfeiture.

But no such disposition is shown in the language of the amendment. No allusion to completed road is made, and the term "constructed" is to be read in the light of the laws *in pari materia*, which have already been sufficiently examined.

c. But before the time for the forfeiture to attach had occurred, to-wit: on the 10th of March, 1860, the entire amendment was expunged, excepting and reserving to the State, nevertheless, all rights, remedies, and forfeitures accruing under said amendment.

See concurrent resolutions of legislature, p. 297 *Laws* 1860. p. 194, record.

These words, "saving all rights, remedies, and forfeitures accruing under said amendment," only saved rights, reme-

dies, and forfeitures accrued by reason of acts already done.

A repeal of a criminal law, saving all prosecutions accruing under it, will save a right to prosecute for every former violation of its provisions, but an act committed a year after its repeal certainly can not be prosecuted under it. The rules of construction applicable in regard to criminal laws and those as to laws prescribing forfeitures are the same, being a restrictive construction against the enlargement of the scope of both.

d. But nothing in the Act of 1864 can be regarded as a legislative declaration of forfeiture, even if a legislative enactment were ever sufficient to supply the place of a judicial determination. Such act on the part of the legislature must be at least a distinct and unequivocal declaration, showing an intention on the part of the State to avail herself of the forfeiture; and when the title of the State, as in this case, can be fairly deduced from another source, a forfeiture, which is never favored nor strictly enforced, will not be presumed.

The counsel for the defendants cited two cases in the court below, neither of which occurred under the constitutional provisions of our federal and state constitutions, prohibiting the taking of property without due process of law, or the passage of laws by *a State* impairing the obligations of contracts, *see Smith vs. State of Maryland*, 6 *Cranch* 286, and *United States vs. Repentigny*, 5 *Wal.* 211, and omitted to cite the case of *Fairfax's Devisee vs. Hunter's Lessee*, 7 *Cranch* 603, in which this Court says, "we will not say that it was

not competent for the legislature, by a special act, to have vested the land in the commonwealth without an inquest of office," etc.

But such an effect ought not, upon principles of public policy, to be presumed upon light grounds. That an inquest of office should be made in case of alienage, is a useful and important restraint upon public proceedings. It affords an opportunity for the public to know the nature, the value, and extent of its acquisitions, and, above all, it operates as a salutary suppression of that corrupt influence which the avarice of speculation might otherwise urge upon the legislature."

"*The common law, therefore, ought not to be deemed to be repealed, unless the language of the statute be clear and explicit for this purpose.*"

Can it for a moment be said that the language of the Act of 1864, being the very Act which sought to transfer the property to the defendants, did *uno flatu* declare a forfeiture of all the rights of the original company (even conceding for the moment the power to do so, which, we shall see, is emphatically denied by this Court)!

We have seen that the State elected to proceed under the mortgage, which it caused to be foreclosed in 1860; that in March, 1861, the legislature passed an Act granting the rights acquired under the foreclosure to certain parties under the corporate name of the Southern Minnesota Railroad Company, and providing that said Southern Minnesota Railroad Company should build and construct ten miles of said

railroad within one year from the 1st of January, 1861, and upon its failure, etc., the unbuilt roads, franchises, lands, property, etc., should be absolutely forfeited, and should revert to the State without any other act or ceremony whatever.

p. 222, record. *Sec. 5, Special Laws, 1861, p. 229.*

pp 227-232, record. This legislation was repeated in1862 and 1863, with similar clauses of forfeiture. Now, the language of the grant of 1864, under which the defendants claim, is as follows:

pp. 233-239, record. "That all the rights, benefits, privileges, property, franchises, and interests of the Southern Minnesota Railroad Company, *acquired by the State of Minnesota by virtue of any act, deeds, sale, foreclosure, agreement, or thing by said company heretofore done or suffered, or by reason of any forfeiture, or by virtue of any law of the State, or any foreclosure by the Governor of the State, acting for and in behalf of the State, or by reason of the sale of the same, or any part thereof, by the Governor of the State of Minnesota, and bid in and purchased by the Governor of the State of Minnesota for the benefit of the State of Minnesota, are hereby granted,*" *etc.*

Now, does the language, "or by reason of any forfeiture," refer to the constitutional forfeiture, or may it with equal reason be referred to the string of forfeitures provided for in the several Acts we have mentioned, or, what is far more likely, was it inserted without any definite reference to either, but with the intent that the language used should cover and convey every scintilla of interest which the courts should at any time hold that the State had acquired, no matter how acquired.

NOTE.—The deed from the Governor shows the construction put upon the law by the State and the company; no mention is made of any forfeiture, but the trust deed and foreclosure are recited and relied upon as the only source of title. *See ante pp.* 54–55.

Did the legislature intend, by the use of this phrase, to overturn and make void the title of the State under the foreclosure which is repeatedly alluded to in the same clause? and yet this is the effect claimed for it. Is this language clear and explicit for the purpose of declaring this forfeiture and the intention of the legislature to enforce it within the most liberal rules governing such matters?

It is conceived that there can be but one answer. But in a recent case in this Court, arising upon the dealings of a State with a land-grant railroad, where the legislature had *not* in the very act seeking to transfer the grant to other parties, but in an ordinance passed expressly for the purpose, made a distinct and explicit declaration of forfeiture, (the language being "all lands granted to railroads, etc. *are hereby declared forfeited to the State*,") the Court said: "The real estate of a corporation is a distinct thing from the franchises, but the right to acquire and sell real estate is a franchise, and the right to acquire the particular real estate designated in the charter of the company and here in question, is within that category. It might therefore well be doubted whether this right could be taken from the company without an appropriate proceeding instituted for that purpose and prosecuted to judgment by the State."

And further:

"There is a wide distinction between a condition precedent where no title is vested and none is to vest until the condition is performed, and a condition subsequent acting by way of defeasance."

In the former case, equity can give no relief. The failure to perform is an inevitable one, no right can ever vest. The result is very different when the condition is subsequent. There equity will interpose and relieve against the forfeiture upon the principle of compensation, when that principle can be applied, giving damages if damages should be given and the proper amount can be ascertained. By the common law a freehold estate could not be created without livery of seizin, and it could not be determined without some act *in pais* of equal notoriety. Conditions subsequent are not favored in the law, and when they are sought to be enforced in an action at law, there must have been a re-entry or something equivalent to it."

Davis vs. Gray, 16 *Wallace* 203. All that is said by this Court in *Schulenberg vs. Harriman* 21 *Wal.* 63, on the power of the legislature to cause possession to be taken for breach of conditions without judicial proceedings is a mere quotation from *U. S. vs. Repentigny*, 5 *Wal.* 268, and was not the determination of any question involved in the case. The doctrine of *U. S. vs. Repentigny* we do not question, but that without judicial proceedings the legislature of a State can under the provisions of the constitution of the United States prohibiting the passage of any law impairing the obligation of contracts, declare a cause of forfeiture to exist, and *uno flatu* proceed to enforce it, has never been decided by this Court. In *Davis vs. Gray* it has said "that the act of incorporation and the land grant here in question were contracts is too well settled in this Court to require discus-

sion. As such they were within the protection of that clause of the constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts. The ordinance and the constitution of 1869, in so far as they concern the question under consideration are nullities and may be laid out of view."

The defendants seem to suppose that by virtue of the state sovereignty, the State, through its legislature, might do that which would be beyond the power of an individual, but the Court, in the case last cited,very emphatically condemns this view of the case. It was a case where the State of Texas and its legislative acts stood in much the same relation to the action, that the State of Minnesota does here, and in regard to this the Court say:

"When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private parties under like circumstances; when she or her representatives are properly brought into the forum of litigation, neither she nor they can assert any right or immunity as incident to her political sovereignty."

id, 231.

d.—But in this case, the State, by electing to foreclose the mortgage, put it out of the power of the company to comply with the condition.

It is true, the company, by no fault of its own, but by its inability to negotiate the state bonds, (*see Gov. Sibley's testimony, p.* 123, *record*,) made default. But it is also true, that the foreclosure of the mortgage was the act of the

State. At the time the company accepted the loan and the terms of the loan amendment providing for both the mortgage and the forfeiture, the performance of the condition was possible, as both parties knew.

They also knew that even if the company should make default in the payment of the first installments of interest, the State might sell some of the company's bonds, or might sell a portion of the lands, and it would still remain possible for the company to comply with the condition.

True, the radical remedy remained to be exercised at the election of the State, of sweeping the entire grant from the control of the company, but if she elected to do so, she must do it subject to the rules governing conditions subsequent, and if she thus elected to render the performance of the condition impossible, it put an end to it.

Upon this point finally turned the case in this Court, which we have last cited. Says the Court: "If a condition subsequent be possible at the time of making it, and becomes afterwards impossible to be complied with, by the act of God, or the law, or the *grantor*, the estate having once vested in not thereby divested, but becomes absolute.

Davis vs. Gray, 16 *Wallace*, 230.

SIXTH.—It is objected that the State is not a party. The same objection was made in the case of *Davis vs. Gray*, cited *ante*, and this Court answered:

"Where the State is concerned, the State should be made a party, if it could be done. That it can not be done, is a sufficient reason for the omission to do it."

It is undoubtedly true that formerly in chancery, as a general rule, it was held that in a bill to enforce a trust, upon a fund conveyed in violation of the trust, both the assignee taking with notice and the assignor, or original trustee, should be joined. But the rule was by no means inflexible.

Thus it frequently happened, especially in the United States Courts, that certain otherwise necessary parties were without the jurisdiction of the court, but if the disposition of the property was in the power of the defendants before the court, it acted upon them and through them upon the property.

See 47*th Rule in Eq.*
Story's Eq. Pleading, 77-87.
Elmendorf vs. Taylor, 10 *Wheat.* 167.

But the rule of practice requiring the presence of all the parties implicated in a breach of trust, was found to occasion considerable difficulty in the English Court of Chancery, and the thirty-second general order of August, 1841, was made to remedy this inconvenience, and has been adopted in terms by the United States Courts.

See 57*th Rule in Equity.*

Under this rule the plaintiff may proceed against the assignee alone, when the trust fund has been assigned, without joining the assignor or the original trustee as a party.

Hill on Trustees, 521-2, *margin page.*

The objection in any event comes too late.

53*d Rule in Equity.*

Palmer vs. Stevens, 100 *Mass.* 461.

SEVENTH.—The state bonds are valid obligations.

This is a point in the case and one upon which it is believed both parties desire the court to pass, although it is not intended to argue the point at any length, as it is thought to be too plain for argument. The loan amendment was by a legislature elected pursuant to the terms of the state constitution, at a session held pursuant to that instrument, and approved by the Territorial Acting Governor who, by the constitution, was to continue in office until superseded by the State Governor.

The Governor elected under the constitution did not qualify until the State was admitted, while the loan amendment was passed in the *interim* between the ratification of the constitution by the people and the admission of the State.

It was adopted by a vote of thirty-five thousand in favor to seven thousand against, and has been recognized as a valid enactment from that time to this by every department of the state government.

See statement of the case.

While Congress, which is bound to guaranty to every State a republican form of government, and may insist on the right to examine the constitution of a proposed State applying for admission, and to approve or reject it, might complain of amendments, or changes to or in that instrument intermediate its adoption by the people and the final vote in Congress admitting the State, it is sub-

mitted that it does not lie in the mouth of a State, at this late day, to urge these irregularities, if such they are, to avoid the payment of her just obligations, having the repeated sanction and ratification of every department of the state government, and of the people in their primary and sovereign capacity.

A fortiori are the defendants, the grantees, holding under a foreclosure which assumes and affirms and relies for validity upon the legality of the loan amendment and the bonds issued pursuant to its provisions, *estopped* from questioning their validity.

EIGHTH.—Did the defendants take with notice of the trust, or are they to be regarded as *bona fide* purchasers for value? These companies derived their title from deeds of the Governor, and not by mere force of the Act of 1864, which distinctly provides that no title shall pass except by the deed, on compliance with certain conditions precedent on the part of the company.

Sec. 4, *p.* 80, *Edgerton's R. R. Laws*, *pp.* 235-241, *record.*

But whether by the Act itself, or the deed executed pursuant to its provisions, both recite in full all the steps upon which the State acquired title; in other words, the facts upon which the plaintiff's claim is based are recited in the deed. So, too, all the facts on which the plaintiff bases his claim were matters of public notoriety, and were evidenced by public acts and records, of which every one dealing with these securities were bound to take notice.

No holder of any of these lands or franchises can make

out his title, or trace it to its original source in the Act of Congress, without being encountered at every step of his progress with full and explicit notice of the facts on which the plaintiff bases his claim. Certain rules are so well settled as to require no labored or extensive citation of authorities in their support.

Viz: That a purchaser will have constructive notice of everything that appears in any part of the deeds or instruments which prove and constitute the title purchased, and this principle applies to every instrument through which the title of the purchaser is deduced and which is essential to its completeness.

Le Neve vs. Le Neve, 2 *Eq. L. Case*, 168-9.

Bushe vs. Ware, 15 *Peters* 93.

And notice of anything sufficient to put him on inquiry, which inquiry would (if diligently prosecuted) have disclosed facts showing a defective title, is sufficient. *ib.*

See also Williamson vs. Brown, 15 *N. Y.* 354.

Up to this point the argument applies to all the defendants alike, as neither can deduce a title except through public acts and proceedings which establish and create the trust which the aid of this court is invoked to protect.

2d. But on the question of actual notice, the position of the defendants is no better.

Their answers and their proofs are alike defective, in failing to deny notice of the facts out of which plaintiffs claim arises; they simply deny all knowledge of any such lien or trust as that claimed by the plaintiff, but every officer of

the defendant corporations admits that at the date of the Act of 1864, and of the conveyances under it, they knew that the State had loaned its credit and issued its bonds to the Southern Minnesota Railroad Company, which had agreed to pay the bonds, and had executed its mortgage of the property in controversy to the State, to secure the payment of the State bonds by the company; that these bonds had been transferred in considerable quantities to the plaintiff, in payment for the grading, who still held them; that no part of the principal or interest had been paid; that the State had foreclosed the mortgage, and had bid in this property, and at the date of said acts and conveyances held it under said foreclosure.

That all of their associate corporators were old residents of the State; most of them had been members of the legislature, and all of them knew these facts as well as the witness; and it is stipulated in the *Agreed Statement of Facts* that all these matters were of public notoriety in Minnesota at the time of the transfer to the defendants, which of itself would be sufficient to charge the whole world with notice.

See case of Broderick's Will, 21 *Wal.* 519.

There is a distinct admission of every fact constituting plaintiff's right of subrogation, and their denial simply amounts to this, that they were ignorant that the law created any right or trust upon these facts.

"*Ignorantia juris non excusat.*"

If authorities were necessary to show the entire failure of this defence in pleadings and proofs, it is sufficient to refer to

Boone vs. Childs, 10 *Peters* 177.

Miller vs. R. R. Co., S. C't of Vermont, 36 *Vt.* 45.

The answer of the trustees of the St. Paul and Sioux City Railroad Company does not deny notice to the trustees but merely to the bondholders. It makes no attempt to interpose the plea of "*bona fide* purchaser" on behalf of the trustees.

The answer is not sworn to, and as a plea of *bona fide* purchaser is entirely insufficient. It is as follows:

"And the defendants further aver that the persons who purchased the preferred or special stock of the several issues hereinbefore set forth, (which were alleged to be secured by trust deeds and conveyances of lands to the defendant trustees) purchased the same in good faith for the full value thereof, and without any notice or knowledge of any right, title, equity, claim, or demand of the plaintiff or any person other than the said company, in or to the lands or property mentioned in the complaint, or any part thereof."

P. 79, *record.*

It is only necessary to compare this with the requisites of a plea of *bona fide* purchaser, as stated by this Court.

"In setting up this plea, the answer must state the deed of purchase, the date, parties, and contents briefly, that the vendor was seized in fee and in possession. The consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independent of the recital in the deed. Notice must be denied previous to and down to the

time of paying the money and the delivery of the deed, and if notice is specially charged, the denial must be of all circumstances referred to from which notice can be inferred, and the answer show how the grantor acquired title. The title purchased must be apparently perfect, good at law, a vested estate in fee simple. It must be by a regular conveyance, for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor, and has no better standing in a court of equity. Such is the case which must be stated to give a defendant the benefit of an answer of plea of innocent purchaser without notice."

Boone vs. Childs, 10 *Peters* 77. 12 *Curtis* 73-4.

Tested by this, the answers of the defendant railroad companies are quite as defective; but as they paid nothing for the grant, and abundant notice is shown by the proofs, this is not very material.

Says the Supreme Court of Vermont: "When they (trustees of a second railroad mortgage) had notice and knowledge of the issuing and existence of the bonds and of their being secured by mortgage, it had full operation and effect to subject the title which they took with such notice and knowledge to the legitimate consequences of that fact. The notice which the law regards as effectual to charge a subsequent purchaser, is such as, if duly heeded and properly pursued, would lead to a knowledge of the true character, in point of fact, of the prior incumbrance, and thus charges him with the legal consequences of such prior incumbrance,

however he may judge of the validity, in point of law, of such incumbrance, or of the legal consequences that may flow from it. By the fact of such notice, being charged with a knowledge of such incumbrance, if, in fact, it existed, the law regards the taking of a subsequent conveyance in prejudice to such incumbrance, as being in *bad faith* on the part of the purchaser, even though, in truth, he took such conveyance, either in heedless disregard of the notice, or upon the supposition that the prior claim was invalid, or in doubt whether it was valid or not, and thought best to take his chances in that respect, and not with any wish or design to defraud anybody."

36 *Vermont* 482-487.

3d. As to actual notice to the trustees, it is admitted by the *Agreed Statement of Facts* that William R. Marshall, one of the trustees of the St. Paul and Sioux City Railroad Company, was an old resident of the State, a resident of St. Paul at the time of the foreclosure, for several years Governor of the State, and, as a matter of fact, although inadvertently omitted in the stipulation, editor and proprietor for several years of the St. Paul Press, the organ of the dominant political party in the State at a time when these matters were a subject of constant discussion, both in and out of the legislature: that Charles Schaeffer, another trustee, was State Treasurer at the time of the foreclosure and up to the passage of the Act of 1864, and as such had the custody of the bonds of the company deposited as collateral security for the state bonds, and that both were perfectly familiar with the entire history of ehe matter.

Mr. Chamberlain swears that he met Samuel B. Ruggles, trustee of the Southern Minnesota Railroad Company in 1864 or 1865, not later than 1867, he is not positive as to the year, and Mr. Ruggles conversed with him and displayed the utmost familiarity withe the whole subject.

In addition to this, every one of the defendants' witnesses competent to speak on the subject, including the presidents of both roads and Hon. Edmund Rice, who is the acknowledged father of railway enterprise in this State, state that among financial and railway circles, both in this country and in Europe, the entire history of the matter, especially among those interested in Minnesota railroads, was fully and thoroughly understood, and that the amendment and legislation under it had to be frequently and thoroughly examined by those contemplating investment in the bonds of the company, and after such investigation, as Mr. Rice says, in answer to a question of defendants, the money was advanced.

This testimony applies to the holders of the bonds as well as the trustees, as it embraces the parties who advanced the money to build the Minnesota railroads.

But supposing it to be confined to the trustees, who are usually railroad lawyers, like Messrs. Ruggles and Man, or railroad capitalists, like Thomas A. Scott, and who, it must be presumed, investigated the subject, as they were bound to do, it matters not whether the holders of the bonds had actual or constructive notice or not. The trustees, as the holders of the legal title to the lands and fran-

chises, are the only ones to whom the doctrine of notice applies. This doctrine is built upon two maxims of equity:

1st. "He who is prior in time is prior in right."

2d. "The equities being equal, the law must prevail."

Under the first, in all cases of the holder of two equities merely, the second must yield to the first.

The plaintiff's equity, the right of subrogation, is prior in time to the equity of the holders of bonds—*cestui que* trust under trust deeds of these lands and franchises made by the new companies, neither having the legal title—it is only when the holder of the second equity fortifies it by acquiring the legal title, that he is permitted to deny notice in order to elevate his equity to an equality with that of the plaintiff.

Boone vs. Childs, 10 *Peters* 177; 12 *Curtis* 63.

Miller vs. R. R. Co. S. C't of Vt. 36 *Vt.* 452.

The counsel for defendant cited in the Court below

Galveston R. R. Co. vs. Cowdrey, 11 *Wal.* 477.

But that was a case where the equities which the holders of the bonds set up grew out of the bonds themselves, and not out of the mortgage or the title to the trust property. They claimed to be *bona fide* purchasers of the bonds as negotiable paper, and defences were interposed to the bonds; no question arose as to the mortgage.

The Supreme Court of Vermont says: "If the legal title is charged with an incumbrance in its creation in the hands of the trustees, it is difficult to see how the *cestui que trust* can have an equity suspended upon that legal title

that shall override such incumbrance. Even if it should be granted, that the trustees were agents merely for holding the legal title, still as the rights of the *cestui que trust* depend upon and are to be asserted through that legal title, whatever affects such legal title in its creation in the trustees, must affect the rights and interests that are dependent upon it."

36 *Vermont* 484.

NINTH. Has the plaintiff by any act or *laches* forever *estopped* himself from maintaining the action? The defendants have entirely failed to maintain the defence set up in the answers. So far from the plaintiff's consulting or advising with the defendants as to the procuring the legislation of 1864, it appears that he was not in the State, and knew nothing of its passage until afterwards—so far as appears, not until informed of it by Messrs. Thompson and Merriam, in Washington. The equitable estoppel sought to be raised is built upon the somewhat frail foundation of accidental and casual social meetings and hand-shakings, in which the plaintiff congratulated the defendants upon having taken hold of the enterprise, and expressed the opinion that it was a good financial arrangement; after, at the instance and application of Thompson and his associates, the legislature had made the grant to them, the plaintiff being guilty of no fraud, and no better advised as to his legal rights than the defendants, who, before accepting the grant, had consulted counsel, and must be supposed to have relied upon the opinion of counsel as to the legal

state of the title, rather than upon anything said or done by the plaintiff, experienced railroad builder as he was. But as to most of these very valuable grants. the plaintiff had no claim and does not now make any. There was certainly no presumption that in addition to the vast land-grants properly passing to the defendants under the grant, they would insist upon holding the pittance of one hundred and twenty sections to which his equities were confined, nor have they expended any considerable sums relying upon this. If plaintiff's claim extended to the entire grant, the defendants' claim of an *estoppel* would be more plausible, although, perhaps, not more sound.

The plaintiff had no notice or expectation that defendants' subsequent course was to be influenced by his friendly expressions of interest. As to the facts out of which the rights of the parties in law sprung, both plaintiff and defendant were fully advised. It is respectfully submitted that this is the most scant pattern of an equitable *estoppel* that has ever been seriously urged upon a court by respectable counsel. In order to create an equitable *estoppel*, the conduct of the party sought to be *estopped* must be fraudulent, must have been intended to influence the conduct of the other party, and must actually have led him into a line of conduct prejudicial to his interest. It cannot exist when both parties have equal knowledge of the facts, or equal means of knowledge. Nor can a statement, innocent in itself and susceptible of being withdrawn or contradicted, be rendered binding by anything which occurs subsequent-

ly, unless made with a full knowledge that it will be acted upon.

Good faith and diligence must, moreover, concur on one side with the want of them on the other, and no *estoppel* will arise in the absence of actual fraud, unless the purchaser was destitute not only of all actual knowledge of the true state of the title, but of the means of acquiring knowledge by a recourse to the record; or in any other manner equally obvious and certain.

It must also appear that the party sought to be *estopped* was acquainted with his title, and wilfully concealed or mis-stated it.

2 *Smith's Leading Cases*, 743-5-6, 767-8; (*6th Am. Ed.*)

The most that can be said is, that after the Act of 1864 had passed, and while the defendants had actually undertaken the enterprise, and at a time when the plaintiff has no reason to suppose that his congratulations would at all affect their subsequent course of action, the plaintiff expressed satisfaction that the enterprise was in such good hands, and that defendants had taken hold of it, that it was a good thing financially, and omitted to mention any claim by him based upon facts well known to both parties.

Estoppels are not favored. Omissions to give notice of facts or claims, knowledge of which is accessible to both parties, even the assertion of mistaken opinions in matters of law, made known pending the transaction, do not estop a party, much less when occurring afterwards in the course of a friendly conversation, not meant or intended as the

basis of subsequent action, and which evidently did not influence such action.

For further authorities on this point, see:

Dick vs. Balch, 8 *Peters* 30.

Carpenter vs. Shellwell, 1 *Kernan* 61.

Freeman vs. Cook, 2 *Ex.* 653.

Hutchins vs. Hubbard, 34 *N. Y.* 34.

Chautauqua Bank Co. vs. White, 2 *Selden* 236.

Brewster vs. Striker, 2 *Coms.* 19.

Piper vs. Gilmore, 3 *Am. L. Reg. N. S.* 584 (*Maine.*)

Andrews vs. Lyon, 11 *Allen* 349.

Clark vs. Coolidge, 7 *Kansas.*

Whittaker vs. Coburn, 6 *Minn.* 297.

8 *Minn.* 133.

This case should not be confounded with cases where parties have not only stood by pending a purchase, and actively encouraged, but have assured the purchaser that the title was perfect, the statement being as of their own knowledge, comprehending both the facts and the law applicable to them. The plaintiff was not present at any business transaction connected with the matter. The purchase had taken place; the defendants were acting under it; he was not informed and had no knowledge that they would be guided by his opinion. His opinion, as given, was true; as an accounting will show that the remaining portion of the lands and property, after deducting all that we claim, constitutes a magnificent grant, that has not failed to enrich the proprietors and make it the best finan-

cial enterprise which the State has ever furnished. (See Powers and Thornton's State map, and the whole counties of land in the richest portions of this State, owned by these companies, all of which are exempt from taxation.) He was not asked, and, in a social conversation, was under no duty to state his ideas of the legal title, and did not attempt to do so. His simple omission, all the facts being known to both parties, cannot, it is submitted, rise to the dignity of an estoppel.

The cases cited by defendant below, *Storr vs. Barker*, 6 *Johnson's Ch.; Smiley vs. Wright*, 2 *Ohio; Broome vs. Beers*, 6 *Conn., and Favin vs. Roberts*, 50 *N. Y.*, were cases where representations were made pending the transaction, which was made on the faith of them, and the parties making them knowing that they would be relied on, and making them for the purpose of inducing the parties to whom made to consummate a transaction then pending, and were statements embracing both fact and law, viz: the contents and legale ffect of documents then in possession or knowledge of the party making the statements, and not accessible to the parties to whom they were made; and in 2*d Leading Cases in Equity, pp.* 21, 22, also cited by defendants, the distinction between such cases and the case at bar, is very clearly pointed out. "It is said, mere silence on the part of an incumbrancer, when he is not brought into contact with parties engaged in any transaction relating to the property upon which he claims a charge, or when he is not called upon by them to speak

concerning it, will not, it seems, amount to a waiver of it upon his part; and the case of *Osborn vs. Lee*, 9 *Mod.* 96, is cited, where the Court was of opinion that it would be very hard for a mortgagee to be at the peril of losing his mortgage money if he did not give notice of his mortgage to any person whom he knew about to treat in regard to the sale or any settlement of the lands in his mortgage,and that it very much differs from the case where the mortgagee himself helps to carry on such treaty. "The distinction," say the same authors, (p. 22,) "seems to be between a participation and procurement, and silence or acquiescence, the one imposing no liability, unless there is willful concealment or fraud. No one should be made answerable for stating his opinion truly, or for answering the questions put to him according to his belief and convictions."

b. Germain to this branch of the case is the defense of *laches* on the part of the plaintiff in not bringing his action sooner.

In considering this question, the exact circumstances in which the plaintiff was placed should be carefully noted.

It is a matter of the current history of the State, well known to every Minnesotian, that the claim made by the State was, not that she would repudiate her bonds, an ugly word which all parties carefully avoided, but that she should pay the bonds when the roads were built and not before; that the consideration for their issue was the completion of the roads, and when the consideration was obtained, provision for payment would be

made. That both plaintiff and defendants believed this, is apparent from the testimony. Upon every principle of good faith and justice, the State was bound to protect the defendants in the enjoyment of the grant to them, and also to provide for the payment of her obligations held by the plaintiff. Whatever the result of this litigation to the parties litigant, the State is the ultimate party, equitably and morally bound to protect them both. In this posture of affairs, it was natural that both parties should have looked to the completion of the roads, as the period of liquidation of the State indebtedness; that the plaintiff should prefer to await that time rather than to harrass the defendants with a litigation, which, however meritorious, so far as he was concerned, would result in taking property from them to pay an indebtedness which the State was bound to protect them against. It was also natural that the defendants, feeling the same confidence, should accept the grant and build the roads without troubling themselves much about the plaintiff's equities, which provision by the State would remove. Hence the expressions of confidence, out of which an estoppel is sought to be created, that when the roads were built the bonds would be paid.

Now, it is not true, as the evidence sufficiently discloses, that the plaintiff's claim is a new one, or was first made at the commencement of this suit.

From the date of the foreclosure down to the session of 1862, it was the plaintiff's constant claim, urged upon the Legislature during each session by bills and memorials,

that these lands, road-beds and franchises, held by the State as indemnity for her liability to plaintiff, which she had not paid, should only be held as security, and not re-granted except upon condition of adequate provision for payment of the bonds; in other words, that the State should not part with the security until the bonds were provided for. A claim so obvious and so clear, could not and did not remain for twelve years unasserted, as the defendants would have the Court believe, and this claim, so contemptuously treated by the Legislature, and so decisively defeated by the Legislature of 1862, is the same in substance as that in our bill. Upon the defeat of that measure in 1862, the plaintiff ceased to attend the sessions of the Legislature, until after the session at which the act of 1864 was enacted. He had no part nor lot in that legislation. The act of 1862 having failed to secure attention from capitalists, was followed by another, similar in character, in 1863, and finally by that of 1864. The last act of the plaintiff on abandoning the fruitless contest in the Legislature, was to present his protest against re-granting those franchises, the bonds remaining unprovided for. He could hardly have done more. After the passage of the act of 1864, the *laches* of the plaintiff consist in relying upon the good faith of a sovereign State to pay the bonds as soon as the roads were built. In 1870, the roads being then in active progress, the first attempt was made, (*pp.* 246 *and* 248, *Record*,) followed in 1871 by another, (*p.* 248 *Record*,) to secure the payment of these bonds,

which passed the Legislature but was defeated at the polls. This was followed by another in 1872, the roads then being practically completed, which was defeated in the Legislature, and the plaintiff then gave up the contest in despair, and soon after the close of the session of that year, filed this bill.

It seems to be well settled that a party is not bound to rush into litigation if there is a reasonable chance of securing his rights without it, and that the pendency of negotiations for the settlement of a controversy will excuse any apparent delay in the resort to legal proceedings.

Southcomb vs. Bishop of Exeter, 6 *Hare*, 213.

Scherman vs. McArthur, *Law Reports*, 3 *Ch.* 496.

McMurray vs. Spicer, *Law Rep.*, 5 *Eq.* 527-537.

A fortiori ought the rule to be applied where the party, in order to avoid vexatious litigation with the grantee of the State, whom she is equitably bound to protect, delays his action, relying upon measures pending in the Legislature for his relief, and on the good faith and honest purposes of the State itself, and the repeated assurances of her officers and her public and representative men.

It is to be borne in mind that we do not seek to enforce a lien on the product of any capital invested by the defendants. There will be found, it is believed, on an accounting, that the mortgages executed by the defendant companies cover other property not claimed by us, amply sufficient to pay all bondholders and reimburse the entire cost of the road.

If we are successful, the companies get all that they were entitled to under the Act of Congress. They get all the lands that appertain to the road constructed by them. All we ask is the one hundred and twenty sections which under the Act became the property of the original company, and the value of the road-beds which our labor has created, and in which the defendants have not invested a dollar; and the actual value of the franchises at the date of the Act of 1864. Nor do we ask to dispossess a single purchaser of the companies, but that the companies account to us for the proceeds of that portion of the one hundred and twenty sections sold by them; all the remainder of these immense land grants we leave untouched.

It is also to be remembered that none of the principal and but a portion of the interest on plaintiffs bonds was due at the commencement of this action.

But a conclusive answer to the objection on the score of *laches* is: That there are three classes of cases in which lapse of time is a ground for refusing relief in chancery, and the case at bar falls within none of them.

1st. In cases where *no statute of limitations acting either directly upon the case or adopted by analogy* exists, courts of equity have exercised a discretion to refuse admittance to stale claims. In such case, the matter is in the discretion of the court, and no certain or definite rule can be laid down. Each case must depend upon its own circumstances. In *Hawley vs. Cramer*, 4 *Cowen* 743, six years was held not to be an unreasonable time, and it was said by *Walworth, Ch.*

that eleven years had not been considered an unreasonable delay, and that in many cases relief had been granted after a much longer period. The shortest time mentioned as having been held to bar relief to a *cestui que trust* for a violation of the trust, was sixteen years.

2d. In all cases of concurrent jurisdiction at law and in equity, the statutes of limitations are equally obligatory on each court.

2 *Story Eq. Jur. sec.* 1520.

3d. But in many cases, and in all where an analogy can be traced, courts of equity, instead of exercising an arbitrary discretion which has no certain limits and no fixed rules, and is determined in each case by the wisdom or caprice of the chancellor, act upon the analogy of the limitations at law.

Thus if a legal title would in ejectment be barred by twenty years adverse possession, courts of equity will act upon the like limitation and apply it to all cases of relief *upon equitable titles or claims touching real estate*, which is precisely this case, and such is the statute of Minnesota in respect to the recovery of real estate.

Sec. 4, *title* 2, *chap.* 66, *p.* 450, *General Statutes.*
2 *Story Eq. Jur. sec.* 1520.
Story Eq. Plead. 813.
Elmendorf vs. Taylor, 10 *Wheaton* 152.
Miller vs. McIntyre, 6 *Peters* 61.
Wagner vs. Baird, 7 *Howard* 234.

Boman vs. Matthews, 1 *Howard* 184.

Boone vs. Childs, 10 *Peters* 177.

New Albany vs Burke, 11 *Wallace* 96.

De Couche vs. Savelier, 3 *Johns. ch.* 190.

Murray vs. Costar, 20 *John.* 575.

18 *Wal.* 493.

The case of *Railroad Land Company vs. Courtwright*, 21 *Wallace* 310, was an action at law to recover the first one hundred and twenty sections sold to the contractor under a grant precisely similar to this, and where the plaintiff had a legal title to those sections under the same circumstances as the plaintiff here holds an equitable one. A recovery was had after the lapse of ten years after a similar diversion by the State. This case clearly shows the analogy which should be applied to the case at bar. If the lapse of time shown here would not have barred the plaintiff if the land had been conveyed directly to him instead of to the State as *a* trustee for him, upon what principle can it be claimed that a different rule should be applied here?

TENTH.—But the loose allegations of equities arising from large expenditures of money which but for the *laches* of plaintiff, it is claimed, would not have been made, will be found, upon a critical examination of the pleadings and proofs, to have no real existence in fact, and to be mere sounding phrases.

By a comparison of the amount claimed to have been

expended in building the roads (*see p.* 140, *record*) with the amount of bonds alleged in the answers to have been issued and unpaid, it will appear that the companies themselves, or the stockholders, have not expended a dollar; that the roads, as usual in the history of Western railroads, were built entirely with the proceeds of the bonds.

At any rate, the burden of proving the affirmative part of the plea of *bona fide* purchaser, to-wit: a purchase for a valuable consideration, was on the defendant companies, (2*d Leading Cases in Equity*, 125,) and they have introduced no proof of the expenditure of any money other than that realized from the sale of bonds.

If, therefore, these bonds are secured on long lines of railroad and its rolling-stock and the entire land grant appertaining to nearly two hundred miles of road, or ten allotments of one hundred and twenty sections for each road, while we claim an equitable lien upon or interest in only one allotment of one hundred and twenty sections for each road, upon the well known principle of marshalling assets, and throwing the creditor who has two securities upon that one in which the creditor who has but one has no interest, then, even if the court below was right in holding that the trustees, by reason of such expenditures, were *bona fide* purchasers, it should, instead of dismissing the bill, have referred the case to a Master for an accounting, and if it had appeared by the Master's report, that the value of the land grant, excepting the first one hundred and twenty

sections, and of the roads, depots, station-houses, rolling-stock, etc., covered by the mortgages to the defendant trustees, was sufficient to pay all outstanding bonds, a final decree in our favor should have been entered.

GORDON E. COLE.
Solicitors, and of Counsel for Appellant.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM. 1875.

No. 190.

SELAH CHAMBERLAIN,

Appellant,

against

THE ST. PAUL & SIOUX CITY R. R. CO., THE SOUTHERN MINNESOTA R. R. CO., ALBON P. MAN, SAMUEL B. RUGGLES, WILLIAM R. MARSHALL, CHARLES SCHEFFER, THOMAS A. SCOTT, HORACE D. HULL, GEORGE I. SENEY, and JOHN A. STEWART,

Respondents.

APPEAL FROM THE U. S. CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA, IN EQUITY.

RESPONDENTS' BRIEF AND ARGUMENT.

E. C. PALMER,
H. J. HORN,
Counsel for Respondents.

RAMALEY & CUNNINGHAM, PRINTERS, ST. PAUL, MINN.

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Soon after the passage of the act of Congress of March 3, 1857, granting lands to the Territory of Minnesota, to aid the construction of certain railroads (*Record, page* 167), an extra session of the Legislature of the Territory was convened, at which the act of May 22, 1857, was passed (*Record, page* 169), by which the Territory of Minnesota recognized this grant to Minnesota as a trust, the act being entitled "An act to execute *the trust* created by an act of Congress," &c.

The lines of road in controversy in this case, of the two defendant companies, are parts of the line of road marked out in sections 1 and 2 of chapter III of this Territorial act, for the "Root River Valley and Southern Minnesota Railroad Company," afterwards called "The Southern Minnesota Railroad Company." (*Record*, 185.)

No road was built under this act of May 22, 1857.

For the purpose of "expediting the construction" of these lines of railroad, an amendment to the constitution of Minnesota was adopted by the people, April 15, 1858, providing for an issue of State bonds for this purpose, to the land grant companies, so called, on certain conditions, not exceeding in all $5,000,000. (*Record*, 191.)

This amendment being intended, as far as practicable, to execute itself.

An amount, not exceeding $1,250,000 of these bonds, was to be issued to each company designated in the amendment. $100,000 of said bonds to be issued whenever, and as often as ten miles of road-bed should be constructed ready for the ties; and a like amount to be further issued whenever and as often as ten miles of road should be completed with the cars running thereon. Said bonds were to be denominated "Minnesota State Railroad Bonds," to be signed by the Governor, countersigned and registered by the Treasurer, sealed with the seal of the State, and "the faith and credit of the State" were "pledged" for the payment of the interest and principal thereof. Said bonds were to be transferable by the endorsement of the President of said companies, and each company was to make provision for the payment of the interest and final redemption of the bonds that should be so issued and delivered to it; and as security to the State, to indemnify the latter, each company was to execute an instrument to the State, pledging the net profits of its road for the payment of the interest on the bonds that should be so issued to it, and also a conveyance to the State of the first 240 sections of land which each company should be authorized to sell. And as further security, each company should transfer to the State its own first mortgage bonds, corresponding in amount to the said State bonds so issued to such company; and in case of default of such company, to pay the interest on

the State bonds so issued to it, the Governor was authorized, in such manner as should be provided by law, to sell the said first mortgage bonds of such company so transferred to the State, or require a foreclosure of the mortgage executed by said company, to secure the same. And it was further provided, that in consideration of the loan of the State credit to such companies, and as a condition thereof, each company should complete not less than fifty miles of its road on or before the 31st of December, 1861, and not less than 100 miles before the year 1864, and four-fifths of the entire line before the year 1866; and any failure so to complete within the said several times, should forfeit to the State all the right, title and interest of any kind whatsoever, in and to any lands, together with the franchises connected with the same, pertaining to the portion of the road so uncompleted.

By acts of the Legislature of the State, of August 12, 1858, and March 6th, 1860, provision was made for the foreclosure of the mortgages, by order of the Governor, of such companies as should be in default in payment of the interest on the State Bonds that should be issued to it, and also in default in the payment of the interest of its own bonds, which should be held by the State as indemnity, as provided in said loan amendment, and upon such foreclosure to bid the property in, in the name and for the use of the State. (*Record, pages* 194, 197.)

This constitutional amendment was accepted by the companies, who executed to the State the required instruments. Part of these State bonds were issued to these companies for grading. No road was ever completed by any of said companies. Each of said companies having made default in the payment of its mortgage bonds held by the State, and in providing for the interest on the State bonds, the mortgages in 1860 were foreclosed, and the roads, franchises and property were bid in, in the name of the State, in accordance with the acts of the legislatures of 1858 and 1860.

It is not admitted that the bid of the State in this case was merely nominal, or that the same was not paid or accounted for by the State, as asserted by plaintiff's counsel in their brief, or that such an admission was made at the hearing.

railroad bonds, in which he was so largely interested, which was to encourage the building of these roads under the legislation granting them to new parties, so that the excuse or objection of the State for not paying his bonds, constantly urged by the parties opposing the payment of the bonds, would be removed, and the increase of wealth and prosperity which would follow the completion of these lines of communication, would render the State more able and willing to recognize and meet her obligations.

Up to the time of bringing this suit, or nearly so, the plaintiff (as we claim the proof shows, without contradiction,) *never made any claim upon the securities or properties* in question, either in the hands of the State or her grantees, and that the claim, *and the only claim*, he did make, was upon the State, to recognize her *personal* liability, so to speak, on his bonds, and to make the usual provisions (by taxation) for the payment of the interest.

That he knowingly permitted the defendant to be misled as to his real position and relations to these roads and property, (as he now claims them,) and to invest their means in these enterprises, upon the supposition that they were clear of liens.

After immense sums have been expended in building the roads by these defendants, and the policy and expectation, both of the State and General Government, has been thus carried out and realized, the plaintiff at last makes his present claim against the defendants, as an *equity*, to which he is entitled against them, and which we now proceed to consider.

POINTS.

FIRST. The Territory, and afterwards the State, originally stood to the entire land grant, in the relation of trustee, to apply the lands to the purposes intended by the act of Congress. Whatever title it acquired under that act, it acquired and held as such trustee.

(*Argument, pages* 9 *to* 12.)

SECOND. The act of Congress of March 3rd, 1857, although a grant *in presenti*, was in the nature of a "float,"

and did not have the effect to vest in the Territory of Minnesota an interest in specific lands, until the lines of road designated in the act were "definitely fixed."

(*Argument, pages* 12 *to* 17.)

THIRD. It was not competent for the Territory to pass the title to any specified 120 sections, which, by the act of March 3rd, 1857, might be sold in advance of construction, until the lines of road were "definitely fixed," selection made of such sections for each line, and the same approved and certified to the Territory by the Secretary of the Interior.

NOTE.—The lands mentioned in schedules "A" and "B," attached to the plaintiff's bill, were never selected as applicable to the power to sell 120 sections before construction. There is no proof of any such selection; certain lands were certified in 1860, to the State. The statement of the plaintiff, in his abstract and brief (*page* 14,) is, "that by reason of pre-emptions, settlements and cultivation, there was, at the time said routes were definitely located, so large a deficiency of lands on the first twenty miles of each of said roads, that it required all the alternate sections, designated by odd numbers, within both the six and fifteen mile limits, fixed by said act of Congress, to furnish the complement of lands accruing to the State under said act of Congress, and the same were all subsequently certified to the State, and are embraced in schedules annexed to the bill of complaint in this action." These lands were, therefore, certified to the State, as all the lands applicable to the entire lines so far as then located of said company; and there was no selection of any of them as lands to pass under the power of the State to sell 120 sections before construction. The said lands, described in said schedules, could not have been selected as lands which might be sold in advance of construction, because, by the act of Congress, 120 sections, which might be sold at once, must be within a length of twenty continuous miles; but the lands in schedule "A" (of the St. Paul and Sioux City Railroad Company), lie in four ranges of townships, or within a length of twenty-four miles; and those in schedule "B" (of the present Southern Minnesota Railroad Company), lie in eleven ranges, or a length of sixty-six miles.

(*Argument, pages* 17 *to* 32.)

FOURTH. The Territorial act of May 22, 1857, did not pass any title *in presenti* to any of the lands. The title to all the lands, including the 120 sections which the Territory had the power to sell at once, was subject to conditions precedent, to-wit: The construction of a division of twenty continuous miles of road for each 120 sections of land.

(*Argument, pages* 32 *to* 38.)

FIFTH. If the Territorial act of May, 1857, vested at once in the company the title to the 120 sections which the Territory had the power to sell at once, those sections, as

well as other lands, became, by the constitutional amendment, liable to be forfeited to the State, to have the title vested in the company defeated, and re-vested in the State, as though the grant had not been made.

(*Argument, pages* 39 *to* 56.)

SIXTH. The foreclosure of the general mortgage in 1860, by the State, and the purchase by it of the property sold at the foreclosure, extinguished the lien of the particular mortgage on the 240 sections, and vested the legal title to all the property in the State. The State had the right to make, and did in fact make, the purchase for itself. But if plaintiff ever had the right to question the propriety of the State purchasing for itself, or to claim the title so acquired by the State, he has lost that right by lapse of time, and by express assent, and acquiescence in the action of the State.

(*Argument, pages* 57 *to* 73.)

SEVENTH. As between the State and the holder of the State bonds, the State is the principal debtor, and primarily liable.

NOTE.—The application of the doctrine of subrogation, to this case, and the theory of a trust, in favor of the holders of the State bonds, as contended for by the plaintiff, are denied.

(*Argument, pages* 73 *to* 87.)

EIGHTH. The defendant companies are, under the proofs and admitted facts, the owners of the road-bed over which railroads are constructed.

(*Argument, pages* 87–88.)

NINTH. The defendant companies are purchasers in good faith without notice. The trustees defendant and the bond holders, &c., represented by them, also acquired their title in good faith and without notice.

(*Argument, pages* 88 *to* 91.)

TENTH. The plaintiff is estopped by his conduct, from making his claim, and is not entitled to relief by reason of his laches.

(*Argument, pages* 91 *to* 97.)

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Soon after the passage of the act of Congress of March 3, 1857, granting lands to the Territory of Minnesota, to aid the construction of certain railroads (*Record, page* 167), an extra session of the Legislature of the Territory was convened, at which the act of May 22, 1857, was passed (*Record, page* 169), by which the Territory of Minnesota recognized this grant to Minnesota as a trust, the act being entitled "An act to execute *the trust* created by an act of Congress," &c.

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For the purpose of "expediting the construction" of these lines of railroad, an amendment to the constitution of Minnesota was adopted by the people, April 15, 1858, providing for an issue of State bonds for this purpose, to the land grant companies, so called, on certain conditions, not exceeding in all $5,000,000. (*Record*, 191.)

This amendment being intended, as far as practicable, to execute itself.

An amount, not exceeding $1,250,000 of these bonds, was to be issued to each company designated in the amendment. $100,000 of said bonds to be issued whenever, and as often as ten miles of road-bed should be constructed ready for the ties; and a like amount to be further issued whenever and as often as ten miles of road should be completed with the cars running thereon. Said bonds were to be denominated "Minnesota State Railroad Bonds," to be signed by the Governor, countersigned and registered by the Treasurer, sealed with the seal of the State, and "the faith and credit of the State" were "pledged" for the payment of the interest and principal thereof. Said bonds were to be transferable by the endorsement of the President of said companies, and each company was to make provision for the payment of the interest and final redemption of the bonds that should be so issued and delivered to it; and as security to the State, to indemnify the latter, each company was to execute an instrument to the State, pledging the net profits of its road for the payment of the interest on the bonds that should be so issued to it, and also a conveyance to the State of the first 240 sections of land which each company should be authorized to sell. And as further security, each company should transfer to the State its own first mortgage bonds, corresponding in amount to the said State bonds so issued to such company; and in case of default of such company, to pay the interest on

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It is not admitted that the bid of the State in this case was merely nominal, or that the same was not paid or accounted for by the State, as asserted by plaintiff's counsel in their brief, or that such an admission was made at the hearing.

The State having obtained the title to the roads, properties and franchises under the foreclosure, as she understood, made constant efforts to induce new parties to take hold of these important enterprises and carry them on to completion. In 1861, 1862 and 1863, legislation was had, offering the line of road in question to new companies, but without success. (*Record, pages* 219, 223, 228.)

On the 4th of March, 1864, the act of the legislature of the State was passed, under which the defendant companies were organized, (*Record,* 223,) granting to these companies, upon certain conditions, for ensuring the completion of the work, the roads, franchises and property of the original Southern Minnesota Railroad Company, acquired by the State under the foreclosure, &c., or by forfeiture, &c., "free and clear of all claims and liens thereon."

These companies, under this grant, commenced the building of these roads, pushing forward the work vigorously. The usual resort to mortgaging the roads and property was had to raise funds for this purpose, and the bonds secured by these mortgages, as set forth in the answers of the defendants, and admitted by stipulation, were negotiated to purchasers in good faith, and for full value, and every dollar of the proceeds put into the roads. The Southern Minnesota Railroad Company constructed and equipped 167 miles of its road complete, at an expenditure of $5,000,000. The St. Paul & Sioux City Railroad Company constructed and equipped 170 miles of its road complete, at an expenditure of $3,000,000. All the defendants acted in entire good faith, and (as we claim the proof will show) without any notice of any interest or claim of the plaintiff.

(*Printed Record, page* 139, *folios* 418, 419; *agreed statement of facts: testimony, ibid., pages* 98 *to* 124.)

After the default of the land grant companies, a violent popular opposition arose to the payment or recognition of these State railroad bonds, and their validity was questioned, many persons claiming that the State had a just defense to them, upon the ground, mainly, that the roads had not been built in accordance with the conditions upon which these bonds were issued under the constitutional amendment. (*See last proviso, Record, page* 193.) The State bonds soon, under

this opposition, and by reason of the nonpayment, by the State, of the interest, depreciated very greatly. (*Record*, 123, 124.)

The plaintiff, it appears, prior to the foreclosure, had become the holder of a large amount of the State bonds issued to the original Southern Minnesota Railroad (land grant company,) upon which he founds his claim to have the properties, bid in by the State upon the foreclosure, subjected to the payment of these bonds. He in 1861 and in 1862, took much interest, personally, as well as through friends, in the legislation relative to these roads during these years, and appears to have been anxious to have the roads re-granted to new parties, (as we claim the proof shows) who would build the roads, and so obviate the objection made to his State bonds, and was desirous also that the Legislature would at the same time make provision for paying his bonds, or would issue new bonds in place of them. (*Testimony of Banning, Record, fol.* 331, *page* 108; *Drake, fol.* 322, *page* 105.)

The plaintiff's counsel are mistaken in the construction of the testimony (*pages* 36, 37, *of their printed abstract and brief*). We dissent entirely from their statement, as unsupported by, and contrary to the proofs. The plaintiff, besides his interest as a holder of these bonds issued to the Southern Minnesota Railroad Company, was also a holder of a large amount of other like State bonds issued to the Minnesota & Pacific Railroad (*land grant*) Company, and also interested in the Minnesota Central Railroad Company, (formerly the Minneapolis and Cedar Valley Railroad (*land grant*) Company), organized after foreclosure, under legislation similar to that relating to the road of the defendant companies. The plaintiff was the President and principal manager of the Central Railroad Company, under this new legislation. This interest of the plaintiff in Minnesota railroad matters, brought him frequently to the State of Minnesota, and in contact with the railroad men who were engaged in, or about to engage in, building the roads under the legislation which followed after the foreclosure.

The plaintiff (as we claim the proof shows) was uniform in stating and making known his position as to these State

railroad bonds, in which he was so largely interested, which was to encourage the building of these roads under the legislation granting them to new parties, so that the excuse or objection of the State for not paying his bonds, constantly urged by the parties opposing the payment of the bonds, would be removed, and the increase of wealth and prosperity which would follow the completion of these lines of communication, would render the State more able and willing to recognize and meet her obligations.

Up to the time of bringing this suit, or nearly so, the plaintiff (as we claim the proof shows, without contradiction,) *never made any claim upon the securities or properties* in question, either in the hands of the State or her grantees, and that the claim, *and the only claim*, he did make, was upon the State, to recognize her *personal* liability, so to speak, on his bonds, and to make the usual provisions (by taxation) for the payment of the interest.

That he knowingly permitted the defendant to be misled as to his real position and relations to these roads and property, (as he now claims them,) and to invest their means in these enterprises, upon the supposition that they were clear of liens.

After immense sums have been expended in building the roads by these defendants, and the policy and expectation, both of the State and General Government, has been thus carried out and realized, the plaintiff at last makes his present claim against the defendants, as an *equity*, to which he is entitled against them, and which we now proceed to consider.

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NOTE.—The lands mentioned in schedules "A" and "B," attached to the plaintiff's bill, were never selected as applicable to the power to sell 120 sections before construction. There is no proof of any such selection; certain lands were certified in 1860, to the State. The statement of the plaintiff, in his abstract and brief (*page* 14,) is, "that by reason of pre-emptions, settlements and cultivation, there was, at the time said routes were definitely located, so large a deficiency of lands on the first twenty miles of each of said roads, that it required all the alternate sections, designated by odd numbers, within both the six and fifteen mile limits, fixed by said act of Congress, to furnish the complement of lands accruing to the State under said act of Congress, and the same were all subsequently certified to the State, and are embraced in schedules annexed to the bill of complaint in this action." These lands were, therefore, certified to the State, as all the lands applicable to the entire lines so far as then located of said company; and there was no selection of any of them as lands to pass under the power of the State to sell 120 sections before construction. The said lands, described in said schedules, could not have been selected as lands which might be sold in advance of construction, because, by the act of Congress, 120 sections, which might be sold at once, must be within a length of twenty continuous miles; but the lands in schedule "A" (of the St. Paul and Sioux City Railroad Company), lie in four ranges of townships, or within a length of twenty-four miles; and those in schedule "B" (of the present Southern Minnesota Railroad Company), lie in eleven ranges, or a length of sixty-six miles.

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TENTH. The plaintiff is estopped by his conduct, from making his claim, and is not entitled to relief by reason of his laches.

(*Argument, pages* 91 *to* 97.)

ARGUMENT.

I

THE TERRITORY, AND AFTERWARDS THE STATE, ORIGINALLY STOOD TO THE ENTIRE LAND GRANT, IN THE RELATION OF TRUSTEE, TO APPLY THE LANDS TO THE PURPOSES INTENDED BY THE ACT OF CONGRESS. WHATEVER TITLE IT ACQUIRED UNDER THAT ACT, IT ACQUIRED AND HELD AS SUCH TRUSTEE.

This is conceded by all parties. But as it is contended by plaintiff, and denied by the defendants, that an unconditional grant, by the Territory, of the 120 sections which it had the power to sell at once, would be, as to those sections, a good execution of the trust, and would relieve those sections from the trust; and as it is evident that until a complete execution of the trust as to those sections, the State could take no security upon them, and make no valid stipulations in regard to them, which would interfere in any way with a full and complete application of the lands to the purposes intended by the act of Congress; and as the considerations which grow out of the trust relation, and trust character of the title, must enter into the whole history of the case; into all the acts of the Territory and State; and bear upon almost every point that is made by either party—we deem it proper to call the attention of the Court to this trust, in a separate point, and also to state what acts, on the part of the Territory or State, might, as we think, be in proper execution of the trust, and what acts would be in violation of it.

The nature of the trust and the power of the trustee over the property, are clearly defined by the act of Congress.

By the terms of the act, the lands are granted "for the purpose of aiding in the construction of railroads" along the several lines described in the act, and the lands so granted "shall be held by the Territory or future State of

Minnesota for the use and purpose aforesaid." And the lands granted for each line of road "shall be exclusively applied in the construction of that road, for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever." (*Sec.* 1.) And "the said lands hereby granted to the said Territory or future State, shall be subject to the future disposal of the Legislature thereof, for the purposes herein expressed, and no other." (*Sec.* 3.)

Section four prescribes at what times the Legislature may dispose of the lands

The object of Congress was to secure the construction of the several lines of road between the terminal points mentioned, and to do this through the grant to, and trust vested in, the Territory and future State.

The Territory accepted the grant, and the trust and obligation to secure the construction of the roads with the lands, and the power to dispose of them for that purpose, and no other, and in such way, and no other, as should secure that end.

And, although by the terms of the act, no title except to 120 sections for each line could be passed by the State until construction of road, and the title to 120 sections for each line might be passed before any construction, yet the latter are subject to the same trust as the former, and must be applied by the State to the same purpose.

Precisely how they should be applied to that purpose was, provided the State so applied them, probably in the discretion of the legislature. It might determine that the State should itself construct the roads, and reimburse itself by sales of the lands, as its power to sell attached to successive installments of 120 sections; or it might entrust the construction of the roads to companies or individuals, and grant the lands to them for such construction, or sell the lands and pay them out of the proceeds But whatever method it should adopt for construction of the roads, it was its duty as trustee, to attend to the application of

the lands to the construction of the roads, and to hold them, and in case of sale the proceeds, for that purpose, and no other; a duty it could not devolve upon any one else.

And the trust could not be fully executed without completion of road; nothing else but such completion would fulfill the intention of Congress. The grading of the entire length of each line, would not be a compliance with such intention. The last clause of section four of the act reads, "and if any of said roads or branches is not *completed* within ten years, no further sale shall be made, and the lands unsold shall revert to the United States," so that, if within the ten years the State had, without selling the one hundred and twenty sections, done no more than merely grade the lines, the entire lands would have reverted, and it could not have retained any part of the one hundred and twenty sections, to compensate itself for such grading, although it might have expended on such grading a great deal more than the value of those sections; because the consideration to the United States for its grant, was to be completed road, and not grading alone. The Territory could not fulfill its trust to hold the lands, and apply them to the purposes of the act of Congress, by transferring them in consideration of grading alone, or by any arrangement which might result in nothing but grading.

Our construction of the act is, that in regard to the one hundred and twenty sections, which the Territory had authority to sell at once, it could have sold them, receiving proceeds of the sale for the trust to attach to, or it might have granted them to a company or individual, for *completing* a division of twenty miles of road, reserving, if it vested a title to them, before any road was completed, the power to enforce their application to the *completion* of that amount of road. In case of a sale for cash, the duty of the State, as trustee, would have been transferred from the lands sold, to the proceeds received; it would have been its duty to complete, with those proceeds, twenty

miles of road, and such duty would not have been performed by merely grading road.

The State could not dispose of the lands, in such way as to apply neither them nor their proceeds to completed road. If it could by any such disposition, pass the title, the trust would still adhere to the lands, until its grantee had so applied them. They would still remain trust property in the hands of the grantee.

II.

THE ACT OF CONGRESS OF MARCH 3D, 1857, ALTHOUGH A GRANT IN PRESENTI, WAS IN THE NATURE OF A "FLOAT," AND DID NOT HAVE THE EFFECT TO VEST IN THE TERRITORY OF MINNESOTA AN INTEREST IN SPECIFIC LANDS UNTIL THE LINES OF ROAD DESIGNATED IN THE ACT WERE "DEFINITELY FIXED."

Railroad Co. vs. Fremont County, 9 *Wall*, 89.

Railroad Co. vs. Smith, 9 *Wall*, 95.

The act provides that "there be, and is hereby granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads * * * from Saint Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux River, * * * also from La Crescent, via Target Lake, up the valley of Root River, to a point of junction with the last mentioned road, east of range seventeen, every alternate section of land designated by odd numbers, for six sections in width, on each side of each of said roads and branches; but in case it shall appear that the United States have, *when the lines or routes of said* roads and branches are *definitely fixed*, sold any sections or any parts thereof, *granted as aforesaid*, or that the right of pre-emption has attached *to the same*, then it shall be lawful * * to select lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, &c., * * provided that the land to be so located shall in no case be further than

fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches." * * *

It is apparent from these provisions, that specific lands are not affected by the grant, or secured and held to aid in the building of the roads until the lines of such roads are "definitely fixed."

The language of the act not only lacks precision in respect of designating lands by governmental subdivisions, but the location of terminal and intermediate points to and through which the roads must run, admits of a wide divergence of route between the points named. "From St. Paul and from St. Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the territory, in the direction of the mouth of the Big Sioux river."

Prior to the definite location of the route, it would, of course, be impossible to predict what point of junction would be selected west of the Mississippi, or where the line would strike the southern boundary of the Territory, and hence it could not be ascertained from the language of the act alone, what particular strip or zone of country would fall within the operative force of the grant.

At the date of the act there were no vacant or unappropriated government lands near the eastern termini, St. Paul and St. Anthony, or for many miles southwesterly therefrom. What is true of one route is substantially true of each of the roads and branches designated in the act.

Again, it clearly appears from the language of the act, that until the route of each road is "definitely fixed," the public lands lying within the probable path of such road may be sold or pre-empted, without restriction, reservation, or limitation, on account of the grant. But as soon as the line of any one road is "definitely fixed," that is, surveyed and staked out on the face of the earth, under proper corporate authority, the lands applicable to that line of road became, at that time, and by force of that location, segregated from the general mass of public lands and specifically set apart, and devoted to aid in the construction of that road, and cannot thereafter be diverted to any other purpose. The United

States can no longer sell the alternate odd sections within fifteen miles on either side of the line thus "definitely fixed," nor can individuals pre-empt them.

The grant which before was indeterminate—a "float," is now certain, fixed, and has acquired precision by force of the act of location alone. Location, therefore, is the one thing, the appointed thing, the only thing, which gives certainty to the grant, precision to the title, and fixes beyond change or recall the rights of individuals, of the United States, and of the State, in respect to the lands. It anchors and holds fast what before was unsettled—a "float." It separates and defines, by visible monuments, a strip of country thirty miles wide and of far greater length, and devotes it to the purposes of the grant, and at the same time relieves a still wider area of territory from the danger, which had been possible previously, of a similar appropriation, had location being made elsewhere. Just how far the line of a long road should be "definitely fixed," in order to produce this effect, is not in terms, perhaps, provided, but from the fact that sections of twenty miles in length are referred to in the act, and made severable parts of the whole line, and especially as the act provides that one hundred and twenty sections of land, the full grant for twenty miles of completed road, may be sold in advance of construction, it would seem that at least twenty miles of the line or route should be "definitely fixed," before there could be said to be a location at all, within the meaning of the act.

But however this may be, it is clear that some part of the route or line of road must be "definitely fixed," or the lands available at the date of the act may all be sold or pre-empted, and the grant become barren and ineffectual.

Again, in contests between a railroad company and purchasers or pre-emptors, the company must show a definite location of its road prior to purchase or settlement, or it will be defeated. Such has been and still is the invariable rule of the Land Department, and for several years the same rule has been applied in contests between railroad companies, until it may now be said that the rule is universal that priority of location gives priority of right.

Our position therefore is, that until some portion of the

line of these roads was "definitely fixed," (which the record shows was not done till July, 1857,—record, folio 404,) neither the Territory of Minnesota nor any grantee thereof acquired any right, title or interest in or to any specific lands whatever under the act of March 3d, 1857.

Counsel for plaintiff concedes that the Territory could not take title as against pre-emptors and purchasers from the United States until the specific sections had been designated by a definite location of the road, yet he claims that in every other respect, and for every other purpose, the title vested at the date of the passage of the act.

But the title to what? Certainly not to specific lands, for none were described; and the right to purchase and pre-empt continued unabridged. The Territory could not, as we have seen, acquire title to *sections* of land, as distinguished from the general interest created and conveyed by the grant, until something had been done *dehors* the grant, which should give precision to the grant.

Hence, if we concede here, what we deny hereafter, that the act of May 22, 1857, passed all the rights which the Territory acquired under the act of March 3d, 1857, the admission will not aid the plaintiff. For the question here is not whether the act of May, 1857, is a grant *in presenti*, and operated to put the company in the place of the Territory, but whether in May, 1857, the Territory had title to, or an interest in 120 sections of land which it could transfer to any one—and this question, we think, scarcely admits of discussion.

The United States being the owner, and holding the legal title to all public lands, makes a donation in respect thereof, which, by its terms, and from the nature of the object it is intended to subserve, is indeterminate in every essential particular. The routes of the roads, except as to termini, the dates of location, the lands to be carved out of the public domain for the uses of the roads, are all uncertain, and possible only in the future. From the date of the act to the date when some line or route of those provided for, is definitely fixed, the public lands are as free to purchasers and pre-emptors as before the act was passed. The United States is as free to sell and convey as before; the legal title

to specific lands or sections of land is in the United States as fully, as absolutely and as free from the operation of the grant as if the grant had not been made. Every acre of land within the belts of country indicated for roads, may be purchased or pre-empted before the trust is accepted, or a mile of road surveyed or "definitely fixed."

How can it be claimed that under the terms of a grant which secures nothing, describes nothing, locates nothing, vests nothing, the grantee, or more properly the trustee, acquires *title*, the legal or equitable *title*, to specific parcels of land, or to land in mass? Title to real estate in this country is allodial, and it is a doctrine of the common law, that a freehold shall not commence in future, although a lesser estate may so commence.

Johnson vs. Stagg, 2 *John.*, 510.

Counsel invoke the doctrine of relation, and claim that "as to intermediate conveyances, the location and definite designation of the specific land took effect by relation from March 3, 1857, the date of the act of Congress, so as to render valid every intermediate sale or disposition of the land by the Territory."

There are several reasons why this doctrine cannot apply here:

1. The United States did not grant to the Territory, nor the Territory to the Southern Minnesota Railroad Company, the title to any specific land.

The act of March 3, 1857, was a grant which subsequent events might or might not make definite and applicable to specific lands; but the date of such contingent events was material—so much so as to furnish the test of ownership as against rival claimants, and could not be made the basis or occasion for the application of a legal fiction. The act makes it material and the test of ownership under the grant; as if a deed deposited as an escrow should expressly provide that it should take effect from the date of the happening of the event with reference to which it was deposited.

2. There was no *sale* or disposition of the lands described in the bill, or of any of them, or of any particular lands, by the Territory.

This point will be discussed more at length hereafter in another connection, and we only suggest now, that we think no case can be found where the doctrine of relation has been applied, which did not show as much certainty and definiteness in respect to the subject matter of the controversy in the first instance, or at the date to which the second act was made to relate, as there was at the date of the latter act itself. A parol demise for 20 years, accompanied by possession, must be certain and clear in respect to the demised premises, or a subsequent written demise will not be held to take effect from the date of the former.

3. The doctrine of relation will never be resorted to when its application will do wrong to strangers.

Jackson vs. Bard, 4 *John.*, 234.

The present defendants are strangers to the alleged disposition of the lands which it is sought to make valid by the application of this fiction.

They do not claim by, through or under the original company, but directly from the State, as trustee and owner of the grant, and by a transfer which is of equal dignity with the act of May 22, 1857, and of greater efficacy, since the lands had to a certain extent been specifically ascertained long prior to the year 1864. If, therefore, the doctrine now invoked by the appellant is at all material or likely to prejudice the defendant's case, in any respect, it should be discarded, as every fiction must be, when it is not resorted to in aid of justice and to prevent a wrong.

III.

IT WAS NOT COMPETENT FOR THE TERRITORY TO PASS THE TITLE TO ANY SPECIFIC 120 SECTIONS WHICH, BY THE ACT OF MARCH 3D, 1857, MIGHT BE SOLD IN ADVANCE OF CONSTRUCTION UNTIL THE LINES OF ROAD WERE "DEFINITELY FIXED," A SELECTION MADE OF SUCH SECTIONS FOR EACH LINE, AND THE SAME APPROVED AND CERTIFIED TO THE TERRITORY BY THE SECRETARY OF THE INTERIOR.

To maintain this action, the plaintiff must show that the title to the particular sections and parts of sections of

land upon which he seeks to fasten an equitable trust in his favor, became vested in the Southern Minnesota Railroad Company prior to the execution of the conveyance to the State, and by the terms of that instrument, passed to the State in trust for the benefit of the future holders of the State railroad bonds.

It is not enough for him to show that a general interest in an undefined and unlocated body of land, coupled with an absolute or qualified power of disposition of that interest, was acquired by the Company, out of which it undertook to carve a definite proportion, for the security of said bonds; he must go further, and point out the very matter of the trust, the *res* to which it attached, the time it attached, and the terms and conditions governing it and by which a court of equity must be guided in its enforcement.

This has not been and cannot be done.

a. There was no *sale* of lands.

Granting for the present that the original company, by the act of May, 1857, acquired the right to sell 120 sections of land in advance of construction of any part of its road, did it exercise that right and *sell* said sections? We think not.

The most that can be fairly claimed is, that said company put in pledge to the State, as security for its loan of credit, 240 sections of land.

The instrument by which it did or attempted to do this was executed October 15th, 1858.

Its execution was a condition precedent to the issuance of the State bonds, and was one of the securities specially required in the constitutional amendment. Its nature and effect must be determined not only from its terms, but from the whole scope and object of the constitutional amendment, and in connection with all the provisions and terms of that amendment.

That it was in the nature of a mortgage containing a power of sale on default, is apparent from its terms.

No value is placed upon the lands, or agreed upon as a consideration for the execution of the instrument, nor is any language used indicating that the State was bound to allow the market value of the lands to the company or the bond-

holders, but there is the usual power of sale upon default in the performance of the conditions, and other provisions which show that the instrument was, and was intended to be, a continuing security in the hands of the State, for the performance of the contract of indemnity entered into by the railroad company on account of the issue of State bonds.

Provision was made for a discharge or satisfaction of the instrument, not by a re-conveyance of the land, but by declaring the effect of a performance by the company of its contract of indemnity with the State. Here, then, was a mortgage, differing from an ordinary mortgage only in the reservation of a qualified right of sale by the mortgagor, and the substitution of the proceeds of such sale in place of the lands, in certain contingencies.

The constitutional amendment places this instrument in the category of *securities* required to be pledged as a condition to the issuance of the bonds.

"Each company shall make provision for the punctual payment and redemption of all bonds, " &c., "and *as security therefor*, the Governor shall demand," &c., "an instrument pledging the net profits," &c., "and a conveyance of the first two hundred and forty sections of land," &c.; "and as *further security*, an amount of first mortgage bonds," &c.

These three classes of securities were all required to be put up before any bonds could be issued, and were designed for the sole protection of the State. No one class more than another, and, as we insist, neither class, was designed as a trust fund for the payment of the bonds, but "the faith and credit of the State being pledged for the payment of the interest and the redemption of the principal," all this property was intended as security for the contract of indemnity made by the company to save the State from ultimate loss. The State was under disability in two respects prior to the passage of the constitutional amendment; only one of which was removed or removable.

1st. It could not loan its credit or issue its bonds for any such purpose.

2nd. It could not assume a position inconsistent with the proper discharge of its duty as trustee, under the act of March 3d, 1857.

The State had already transferred the grant, conditionally, as we think, to different companies, but none of them were able to do more than locate a few miles of road. Holding the right to sell 120 sections of land for each line of road, (if such was the fact), yet no progress whatever could be made with "the work." They were therefore compelled to borrow means to "launch the enterprise," and chose to do so in the manner shown in the record. They chose to do this to an extent sufficient to give them about 120 miles of graded road each, or half that amount of road fully completed. And to bring it about, they were obliged to pledge all their available resources, present and prospective. They *sold* nothing—neither net profits, nor lands, nor mortgage bonds, but put them all into one common fund to secure its contract of indemnity to the State.

The plaintiff took his bonds with full notice of all these matters, and in full reliance, as the case shows, on the faith and credit of the State, and cannot now be heard to fasten an equitable trust on lands any more than on "net profits" or "mortgage bonds."

b. THERE WAS NO SELECTION OF LANDS.

Section 4, of the act of March 3, 1857, provides: "That a quantity of land, not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches, may be sold," &c.

In *Courtright vs. Railroad Company*, 21 *Wall.*, 310, this court held that 120 sections of land might be sold in advance of construction, and be selected anywhere along the line, provided, that the selection should be confined to a continuous length of twenty miles.

This being the rule, the question of selection becomes material, essential, a condition precedent to the due execution of the power and the transfer of any title to third parties. It has, perhaps, been the general understanding of the profession, and the bill herein was evidently framed in that view, that the advance sections meant those nearest the initial point of the contemplated road, and if such had been found or held to be the true construction of this class of

acts, there would, of course, be no room for choice—no need of a selection. But when there is held to be a right of choice, and the length of the line affords a large number of divisions of 20 miles each, among which such choice can and must be exercised, the matter of selection becomes of paramount importance.

For, how can the title to any particular number of sections of land be transferred in cases of this kind without a specific selection of the 20 mile division within which they are to be found? A conveyance of 120 sections of land lying within a strip of country two hundred miles long by thirty miles wide, containing 3,000 such sections, would, we apprehend, be void for uncertainty. As if A., owning section 10 in twenty different townships, should make a deed of a section 10, without indicating in which township it was situate; and the uncertainty and void character of such an instrument would be further manifest if A. were only entitled to sell and convey one of said several sections at the date of his attempted conveyance. Because, such a restriction implies previous action to designate and set apart, from the whole number of sections which he could not transfer, that particular section which he could transfer.

Under this act, only 120 sections for each line could be sold until the completion of 20 miles of road. The different lines were hundreds of miles in length. The lands within each continuous twenty miles in length were of varying value. Within some of the twenty mile divisions there were no lands whatever available to the grant. In others, there were less, and in still others there were more than 120 sections of the class designated in the grant. So that a company constructing the road in twenty mile divisions, would in some cases be compelled to range ahead and select the deficiency out of a division having an overplus, while in others only the deficiency limits of the same division would be resorted to; while there would be other divisions where the lands "in place" would suffice. Hence it is easy to see that a haphazard, indefinite conveyance or pledge of the first 120 or 240 sections "which the company is or may be entitled to sell," cannot affect the title to particular sections or lands within particular segments of a long line of road.

It is to be noticed in this connection, that this right of choice is not exhausted by one exercise of it. The act provides that when 120 sections have been sold and 20 miles of road built, another 120 sections may be sold in advance of the construction of the next 20 miles, and so the thing goes on by easy stages of twenty miles until the end. And as the same language is used with reference to each of these successive stages of the work, it must follow that the second 120 sections may be selected within any division on the whole line not previously taken, and so with the third and each subsequent quantity until all are taken. This results from the rule laid down in 21 *Wall.*, 310, and the effect is to make the first choice the best, for if the whole line is "definitely fixed," the State or the company has the whole body of land from which to choose, and each subsequent choice becomes less and less valuable, until the last, which is virtually no choice at all. The act further contemplates and provides for a failure to build the whole line, reserving a portion of the land for the unbuilt divisions. Construction by divisions of 20 miles each seems to be the object of the grant, and it is framed so as to apportion the lands as equally as may be among the different divisions.

The question of selection is affected by another consideration.

The act provides that selection of deficiency lands, (so called,) is subject to the approval of the Secretary of the Interior; and it must therefore follow, that if any of the 120 sections should be selected within the deficiency limits, that is, outside of six and within fifteen miles of the line of definite location, the selection of such sections would be subject to the Secretary's approval. *It is not pretended that any selection of* 120 *sections was made by the State or the original company, or that there was any act done to indicate where, or at what point of the line the* 240 *sections embraced in the mortgage were situated, or would probably be situated.* There was no *selection* whatever.

In view of the provisions of the act, and of the rule laid down by this Court, we confidently maintain, that in order to confer a title to the first 120 sections of land authorized to be sold in advance of construction, it must appear that

the road was definitely located—that a selection of said sections was made, and such selection approved by the Secretary of the Interior, and that these sections thus selected was specifically described in the conveyance.

c. The record shows that, as to one of the lines of road represented by the defendant companies, there were no lands applicable to that part of the line graded by plaintiff, which would fall within the terms of the grant.

No one at all familiar with this subject will attempt to maintain that lands can be taken under the grant where no line or route has been "definitely fixed," nor beyond or without the limits fixed in the act. That is to say, if the line has only been "definitely fixed" for a distance, say of twenty miles, no land could be acquired or sold, either before or after construction, unless it could be found within fifteen miles on either side of the located line. And if all the odd numbered sections are purchased or pre-empted prior to such location, no lands whatever would be obtained. If, however, the line has been located for a distance, say of one hundred miles, then, under the construction heretofore placed on these grants, the party entitled to land can go ahead and select the proper quantity anywhere within the designated bounds, but nearest the constructed line; provided he keeps within a continuous length of twenty miles for each block of 120 sections.

The record shows, (folio 404), that these lines of road were definitely located *to the extent of the grading done by plaintiff*, in July, 1857. That is, 37½ miles for one line and 20 miles for the other, and no more, were thus located. Now, upon examination of the list of lands contained in the record, it will be seen that none of those described in schedule A., and of which the St. Paul & Sioux City Railroad Company is owner, lie within a distance of thirty miles from the western terminus of said line of location, and hence could not have been secured or attached to the grant by force of that location. And if the State, or the original company, or the plaintiff, either before, or at the time when the grading of the 37½ miles was completed, had attempted to select these lands, the attempt would have failed upon the facts shown in this record.

With the exception of a few straggling pieces, all the lands

described in schedule A (*Record* 18) lie more than thirty miles from the western terminus of the line graded by plaintiff, and wholly outside the limits fixed by that location.

It is claimed by counsel, (evidently in view of this difficulty,) "that in July following the grant, the lands which the Territory was authorized to sell in advance of construction were identified, and by the agreed statement of facts, are admitted to be the same set forth in the schedules annexed to the bill." (*Brief, p.* 68.)

The record does not support this claim. It nowhere appears that the 120 sections which might have been sold in advance of construction, had the proper preliminary steps been taken, were at any time identified, or selected, or sold. The record does show, perhaps, that the lands described in the schedules annexed to the bill, were received by the defendant companies upon completion of the first ten miles of each of their roads respectively, but this by no means establishes, or even tends to establish, that these lands form any part of the 120 sections which might have been sold in advance of construction, nor any part of the 240 sections which were attempted to be embraced in the conveyance to the State as security for its loan of credit. There is no necessary or apparent connection or identity between the lands conveyed by the State to these companies under the grants succeeding the foreclosure and forfeiture of the lands, &c., of the old company, and the lands which the latter company might have sold or transferred either before or after construction, had it possessed the title thereto, and gone forward without default in the prosecution of its undertaking. The lands described in the schedules were acquired under grants and upon the performance of conditions wholly different from those which controlled the rights of the original company. They were never owned, sold, selected or conveyed by the latter company. By no act of this company were they set apart as and for the quantity authorized to be sold in advance of construction, or designated in any manner for any purpose. They were conveyed by the State to these defendants without selection or previous segregation from the whole body of the granted lands pursuant to any special privilege, but simply and only because in the orderly conduct of business in the

land department of the United States, these lands happened to be the first certified to the State for the benefit of these roads. The history of these transactions very clearly shows that there never was any intention or attempt to make a distinction between the lands lying within the different twenty mile divisions into which the roads were, by the act of March 3d, 1857, divided; but the State, in dealing with the lands, treated them as one body for each line of road, and attempted to make its loan of credit secure by a lien upon the whole—or rather by an arrangement which would not permit the lands to be transferred any sooner or faster than they were earned.

The act of March 3d, 1865, (*Statutes at Large, vol.* 13, *page* 527,) is to be considered in this connection. It was passed before an acre of land had been deeded to the defendant companies; and its provisions were evidently framed in view of the changed condition of things, and so as to permit the grant to be administered in harmony with the legislation of the State under which these latter companies acquired their rights.

Section 2 of the act provides "that the land to be so located, shall in no case be further than twenty miles from the lines of said roads and branches, to aid in the construction of which said grant is made, and said lands granted shall in all cases be indicated by the Secretary of the Interior."

Section 6 provides "that the lands hereby and heretofore granted to said Territory or State of Minnesota, shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely:

"When the Governor of said State shall certify to the Secretary of the Interior, that any section of ten consecutive miles of said road is completed in a good, substantial and workmanlike manner, as a first-class railroad, and that the said Secretary shall be satisfied that said State has complied in good faith with this requirement the said Secretary of the Interior shall issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to, and within a limit of twenty miles of the line of said section of road thus completed,

extending along the whole length of said completed section of ten miles of road, and no further," &c., &c.

There is a reservation of existing rights, acquired under any previous act of Congress, an extension of the time within which the roads are to be built, and a clause providing that lands undisposed of shall revert to the United States.

This act is important in several respects. It enlarges the original grant from six to ten sections per mile, with indemnity limits to correspond. It requires that the lands granted shall in all cases be indicated by the Secretary of the Interior.

It establishes a new rule for the disposal of the lands, so far as the manner of doing it is concerned—abrogating the clause allowing 120 sections to be sold in advance of construction, reducing the divisions from twenty miles to ten, confining lands, when earned, to limits coterminous with constructed road, and making it imperative to issue patents for such lands only upon the Secretary of the Interior being satisfied that each ten mile section of road has been completed, as required by the act.

At the date of the passage of this act, no part of either of the roads of the defendant companies had been completed, but each company went on and completed its road in ten mile divisions, and on proper proof thereof, received its lands. The plaintiff, being interested in one of the land grant roads, did the same thing, and did not claim or hint that he intended to claim any interest in any part of the lands thus conveyed to the defendants from time to time, as earned, under the provisions of this act, and of the acts passed by the State.

d. The record shows that the land described in the schedules attached to the bill, are not "included within a continuous length of twenty miles of each of said roads and branches," as required by the act in case of a sale in advance of construction. The lands in schedule A, lie in four different ranges, and extend over a distance of twenty-four miles, while the lands in schedule "B" lie in eleven different ranges, and cover a length of sixty-six miles. Now, as each block of one hundred and twenty sections must, by the express terms of the grant, be included within a continuous length of twenty

miles of each road as located, whether a sale is made before or after the building of twenty miles, it cannot require argument to show that the lands described in these schedules cannot be regarded as any portion of the one hundred and twenty sections of land, which, under the conditions heretofore stated, might have been sold in advance of the building of any road. It conclusively appears that they are not and were never intended to be any part of such lands.

In *Courtright vs. Railroad Company*, 21 *Wall.*, 310, all the conditions were complied with. The proper number of sections were selected within the designated limits, the selection approved, the lands duly certified, and sold by specific discription, as and for the particular lands authorized to be sold in advance of construction.

Here there is nothing of the kind, every precedent condition is uncomplied with. And we apprehend that the Court will not be eager to find excuses for these omissions, or go far in search of reasons for relaxing the ordinary rules of construction and of practice, in favor of a claim as stale as this.

We go further, and insist that by the terms of the constitutional amendment, and on the face of the instrument executed by the original company to the State, it clearly appears that the 240 sections therein referred to, were not, and were not intended to be, the sections which, by the act of March 3d, 1857, could be sold in advance of construction.

Six lines of road (including branches) are designated in the act of March 3d, 1857, or two lines with branches and two without.

The Territorial legislature changed this somewhat, and bestowed the grant upon four different companies, giving two main lines to one company, one branch line to a second company, one main line and its branch to a third, and the other main line to a fourth.

There can be no doubt that it was competent for the Territorial legislature to do this; and it might have conferred the grant upon as many companies as there were lines and branches. Had this been done without conditions precedent, each company would have had the right to sell 120 sections of land, (after location of its line, and upon proper selection,)

in advance of construction, but no more. Under the arrangement that was made, if we grant that the company took the rights of the State, two of the companies could only sell 120 sections in advance of construction, while the other two, having each a line and a branch, could dispose of 240 sections. Now, the constitutional amendment provides that each company, without distinction, shall pledge to the State the first 240 sections which it is, or may be authorized to sell, &c. What is meant by this? Certainly not that these sections are the very ones that could be sold in advance of construction, for as to two of the companies, they could only sell 120 sections under that feature of the grant, and it will not do to place one construction on the amendment for one class of companies, and another for the other class, when the language used indicates no distinction. Whatever construction is the true one, it must be the same for each and every company. The accidental circumstance, (if it be such,) that this suit is brought against the successors of a company which might have sold 240 sections, by reason of its being the grantee of two lines of road, cannot change the result or the construction to be adopted, from what it would have been had the suit been brought against the old Transit Company, which was grantee of but one road.

Had suit been brought against the latter company, or its successor, the Winona & St. Peter Railroad Company, it is not easy to see how it could have been maintained on the theory now urged by the plaintiff herein. In addition to the difficulties we have pointed out, there would be the insurmountable one of designating which half, or portion of the 240 sections referred to in the instrument executed to the State, (all those instruments being similar), should be subjected to this alleged trust in favor of the bond holders. In such case, counsel could not claim that the company had title to more than 120 sections, until after twenty miles of road were constructed, and as it had conveyed to the State 240 sections, it would, of course, be necessary to point out the particular 120 sections upon which that instrument became operative.

In this case, while no such peculiar difficulty exists, the illustration is pertinent in aid of the construction, which we

insist should be put upon the transaction under consideration.

Another clause of the constitutional amendment is of value in this connection.

It is provided that, "any failure on the part of any such company to complete the number of miles of its road or roads, &c., shall forfeit to the State all the right, title and interest of every kind whatsoever in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them constructed, *and a fee simple to which has not accrued to either of said companies by reason of said construction*, WHICH WAS GRANTED TO THE COMPANY *or* COMPANIES, &c., BY ACT OF THE TERRITORIAL LEGISLATURE," &c.

The plain meaning of this provision is, to restore to the State in the contingency named, all the lands embraced in the Territorial acts, which the companies had not earned by construction of road, and to make it effectual as against all transfers, and liens, hostile to the interests of the State, and to the full accomplishment of the objects of the trust, there is the declaration that a fee simple title shall not accrue to any lands, in any company, except for constructed road.

If any company builds its road, or any twenty miles thereof, it shall receive an absolute title in fee to the proper quantity of land, which no subsequent failure can divest. If such company builds no road, it shall get no lands, but shall forfeit whatever right, title and interest it acquired under the Territorial act, which was only the exclusive right to obtain a title by construction of its road.

It is not that the lands or the title shall *revert*, but that the company shall forfeit *its* right to build the road, earn the lands, and acquire the absolute title thereof in fee. There is no distinction made between lands which, under the act of Congress, might be sold in advance of construction, and lands which could only be sold after twenty miles of road had been built. No allusion is made to the former class of lands, nor any language used which would indicate that any such class was thought of by the framers of the constitutional amendment. The 240 sections are made one class for all the companies, and were understood to form one class by all parties.

Not only do the terms of the constitutional amendment indicate this, but the terms of the instruments executed to the State by each company, and which were, *mutatis mutandis*, alike, indicate it also, and show, beyond all possibility of doubt, that it was not intended to sell or transfer any particular 120 sections, or the lands falling within any particular twenty-mile division of the located lines of road.

That instrument contains the following clause, among others, indicative of a similar purpose: "First, that the said two hundred and forty sections of land hereby conveyed, *shall be of average quality and value with those of the entire lands* secured to and vested in the said party of the first part, by an act of the legislative assembly of Minnesota, approved May 22, 1857."

That is to say, the company and the State, by agreement, shall select out of the entire body of land available to the road, *wherever situated*, and without reference to twenty mile divisions, 240 sections, which shall be of average quality and value with the whole number of sections embraced in the Territorial act. This is a very different thing from the selection contemplated in the act of Congress, as interpreted by this Court in 21 *Wall.*, 310. No reference is made to the act of Congress, nor to lands lying contiguous, or within the same continuous length of twenty miles, nor to the position now taken by the plaintiff, that the execution of the instrument was a sale of the lands described in the bill, but it is expressly provided that at a future time, after the lands are earned by construction of the road, the 240 sections shall be so selected and located as to be equal in quality and value with the average of the whole body of land enuring to the company under the Territorial act. And if the company had kept the interest of the State bonds paid up promptly, and had built the road and earned all the lands, and the State had called upon it to make conveyance of specific lands as provided in the trust deed, and there had been a disagreement as to the selection, so as to render necessary a resort to a legal tribunal; how could a specific performance have been enforced, save by an inspection and comparison of the whole body of lands, and the designation of some particular 240 sections of average quality and value with the entire

lands? The State was not to be put off with a selection by the company alone, as would be the rule if advance lands were to be designated, nor a selection of some one of the twenty-mile divisions, out of the ten or fifteen furnished by the location of a long line of road, but covenanted for an average of the whole considered as or by sections. If the whole line was entitled to 1,200 sections, the State was to have one fifth in number, quality and value, and in carrying out this contract, it might, and probably would be necessary to distribute the State's portion along the entire length of the road. For, although the quality of the land as to soil, timber, streams, &c., might be nearly the same all along the line, the value would depend on other circumstances, as nearness to market, to navigable streams, &c., &c., and a single section at one point might be worth a dozen sections at another and remote point, and hence, the State took care not to be put off with the poorest, either in quality or value. But if the parties had intended to deal with the 120 sections, which would only be found within one of the twenty-mile divisions, and available at the date of the trust deed, (for location was made in July, 1857, and the trust deed not until October, 1858,) nothing would have been easier than to have made the selection, had the lands certified, and described by governmental subdivisions in the conveyance itself.

That this was not done, and that the clause aforesaid wsa agreed upon, shows, as we insist, the understanding of the parties in this regard, of which no subsequent parties could plead ignorance or repudiate, to the prejudice of after acquired rights.

The plaintiff plants himself on the trust deed or "conveyance" to the State, of 240 sections, as the instrument which enables him to fasten an equitable trust upon the lands described in the schedules annexed to the bill. He is bound, therefore, by the terms of the instrument he invokes.

IV.

THE TERRITORIAL ACT OF MAY 22, 1857, DID NOT PASS ANY TITLE IN PRESENTI TO ANY OF THE LANDS. THE TITLE TO ALL OF THE LANDS, INCLUDING THE 120 SECTIONS, WHICH THE TERRITORY HAD THE POWER TO SELL AT ONCE, WAS SUBJECT TO CONDITIONS PRECEDENT, TO-WIT: THE CONSTRUCTION OF A DIVISION OF TWENTY CONTINUOUS MILES OF ROAD FOR EACH 120 SECTIONS OF LAND.

The only sections of the act in which the lands granted are mentioned, are sections three, seven, eight, nine, eleven and twelve, of chapter three.

Section three is what may be termed the granting clause of the act, and provides that "all the lands, interests, rights, powers and privileges granted to and conferred upon the Territory of Minnesota, in and by virtue of an act of Congress, (citing the act by its title), applicable to the said roads or lines above mentioned, are hereby disposed of and conferred to and upon the said Root River Valley and Southern Minnesota Railroad Company, *subject to the provisions hereinafter set forth*, and the provisions of the act of Congress aforesaid."

Of course, the Legislature could not grant the lands except subject to the provisions of the act of Congress.

And of course, the Legislature, acting as trustee to apply the lands to a particular purpose, had power to impose as a condition of its grant to the companies, other provisions for ensuring the proper application of the lands to that purpose.

It was not content to pass to the companies the lands, with only the conditions imposed upon them by act of Congress, but it exercised its power as trustee, and, as will be seen hereafter, for the purpose of ensuring the application of the lands to the construction of the roads, and imposed other conditions, "the provisions hereinafter set forth."

Where are those provisions to be found?

Section seven reiterates the grant, declaring the purpose for which it was made, the use to which the lands shall be applied, the same as in the act of Congress, and, doubtless as a matter of caution, extends the grant to any prospective

interest of the Territory, but does not set forth any provisions by the Legislature, subject to which its grant is made. Section eight relates to the mode of selecting "lands in lieu of the sections designated in the act of Congress, which shall have been otherwise appropriated, and to the use of the roads by the Federal Government, all of its provisions being contained in the act of Congress."

They are not, therefore, "the provisions hereinafter set forth," imposed by the Legislature, in addition to those of the act of Congress, as mentioned in section three.

Section nine merely exempts the lands from taxation until they shall have been sold and conveyed by the companies.

Section eleven relates only to the corporate capacity of the companies, to take, hold and dispose of lands, &c.

Section twelve is the only remaining section mentioning the lands, and in it we are to look for "*the provisions hereinafter set forth,*" subject to which the lands are granted. If provisions by the Legislature, in addition to those imposed by act of Congress, are not found in that section, then the phrase we have quoted from section three is nugatory.

Section twelve is in these words:

"When any continuous twenty miles of either of said railroads shall be completed, it shall be the duty of the Governor of this Territory or future State, to certify that fact to the Secretary of the Interior, and so from time to time, as often as twenty more continuous miles are completed, *and said lands shall become the property of the respective companies herein mentioned,* in accordance with the provisions of the act of Congress," &c.

Plaintiff claims that the object of this section was, not to provide when and upon what event the lands granted by the act should become the property of the companies, but merely to give authority to the Governor to make the certificates required by the act of Congress. A clause merely giving authority to the Governor to make the certificates, cannot be considered as a provision by the Legislature subject to which the lands were granted by it, and this clause in the section does not answer the call for "provisions hereinafter set forth" of section three.

We contend that the purpose of the section was to adopt

a rule applicable to all the lands, as to the time when the title should vest.

It could not adopt the rule that title to all the lands should vest irrespective of construction of road, for the conditions in the act of Congress, as to all the lands but 120 sections to each line, would prevent that. But it could adopt and apply to the whole grant the rule which the act of Congress prescribed for all the lands, except 120 sections to each line: that is, that as often as the company should complete twenty continuous miles of road, 120 sections of the land should become its property.

This is the rule which we insist is laid down in this section, and the phrase, "in accordance with the provisions of the act of Congress," &c., refers further to the clause of section 4 of the latter act, which designates the lands that may pass upon the completion of any continuous twenty miles, as "included within a continuous length of twenty miles of said road;" the section refers to the act of Congress for the description and designation and quantity "of said lands" that are to become the property of the companies, as each division of twenty miles is completed and certified.

If the 120 sections which the Territory had power to sell at once, were vested in the company at once and without any condition precedent, (and the act imposes no condition subsequent upon the grant of any of the lands), and the vesting of the title to them was not controlled by section twelve, then not only those sections were not granted subject to any provisions by the Legislature, in addition to those in the act of Congress, as is expressed and intended by section three; but none were, and the words, "subject to the provisions hereinafter set forth," are mere idle words, having no force or effect. For as applicable to the lands other than the 120 sections, there are no provisions in the act, not even those of section twelve, which are other than those contained in the act of Congress, as applied to those lands, all the provisions subject to which they are granted, are those of the act of Congress, and not provisions enacted by the Territorial Legislature. Provisions contained in the act of Congress become the provisions of the Territorial Legislature only so far as the act of that Legislature applies them

in case where the act of Congress does not. To illustrate this, suppose section twelve confined the operation of all the provisions recited in it, to the lands other than the 120 sections which the Territory had the power to sell at once, then they would be simply the provisions of the act of Congress, because the act of Congress applies these same provisions to those lands. But if that section applies the provisions recited in it and referred to by it to the 120 sections, then so far as relates to those sections, they are solely those of the act of the Legislature, because the act of Congress does not enact them as to those sections. There could be no intelligible purpose in reciting and referring to the provisions of the act of Congress in section twelve, (which professes to provide when the title granted by the act shall vest), if it had been intended to apply them only to the part of the land to which the act of Congress itself applies them. The only reasonable purpose for which they could have been inserted and referred to in that section, was to extend them over the lands to which they did not apply before, and so make them applicable to all the lands granted by the act.

Nowhere in the act is there any specific reference to the 120 sections. From the beginning to the end of the act, no distinction is made or suggested between those sections and the other lands; and by no process of interpretation can the words, "*said lands*," used in section twelve, be held to refer merely to lands other than those sections.

That by the terms of section three, all the lands granted are granted without exception, subject to the provisions to be thereafter in the act set forth; that nowhere in the act is there any distinction made between the lands which the Territory had the power to sell at once, and the other lands; that section twelve contains by recital or reference, the only provisions in the act, subject to which the lands are granted; that it does not except from its operation any of the lands; but in providing when the title shall vest, describes them as "said lands," which includes all lands that are granted by the act; that excluding the 120 sections from the provisions as to when, and upon what event the title shall vest, contained in section twelve, will make the phrase "subject to the provisions hereinafter set forth," in section three, mean-

ingless, makes it almost too clear for argument, that it was the intention of the Legislature that its grant should vest the title to the lands only as successive divisions of twenty continuous miles of road should, from time to time, be completed, and that it did not intend, although it might have the power, to grant to the company the 120 sections, upon no condition whatever.

Schulenberg vs. Harriman, 21 *Wall.*, 44.

And when we go beyond the mere language of the act, and consider the relation in which the Territory stood to the lands, the powers and duties pertaining to that relation, the conclusion that it did not, in the act, intend to part with any lands upon the terms claimed by plaintiff for the 120 sections, is rendered still more irresistible.

In construing the act of the legislature, it is to be presumed that it intended that which would be strictly within its power, and the faithful discharge of its duty as trustee. It is not to be lightly assumed that it intended to exercise a power, the existence of which was doubtful, or to do any act which might endanger the trust property, or place it in such position, that it might be squandered instead of being applied to the purposes of the trust.

Did the legislature have the power to pass the 120 sections in the manner claimed by plaintiff?

That is, could it pass the title at once without receiving any proceeds, for the trust to attach to, and with no condition precedent or subsequent, and so that the application of the lands or their proceeds should be entirely beyond the power of the trustee to direct, and so that the lands should cease to be trust property, and should vest in the grantee, absolutely and freed from the trust?

Certainly a trustee, unless authorized by the creator of the trust, cannot properly transfer the trust to another, or substitute another as trustee in his stead.

The act of Congress did not authorize the Territory to appoint a trustee in its stead, to hold the lands for the purpose of the trust created by the act. But the plaintiff's theory of the Territorial act, is in effect, that the legislature, without imposing any conditions of its own, passed the entire land grant bodily and *en masse* with the trust, to hold

and apply the lands to the purposes provided in the act of Congress, to the company, making of the Territory only a conduit, as it were, for the passage of the title and of the trust, from the United States to the company, and of the legislative act only an appointment of a substituted trustee, to take and hold the lands, and it is true, that the latter act would be an attempt to do that, unless there were conditions imposed upon the grant of the 120 sections, enabling the Territory to retain a hold upon them to enforce their proper application; unless our construction of section twelve is the correct one. We insist that the Territory had no power to pass the trust to the company. But if it had and did, what then? Why, that the 120 sections, until they were actually applied to the construction of roads, or they were sold and proceeds realized, to which the trust could be transferred, remained in the hands of the company, trust property, which it could not dispose of except in execution of the trust.

We do not doubt that the Territory might have passed to the company a title IN PRESENTI to the 120 sections, provided the grant had a condition for resumption, in case the company did not apply them to the construction of the roads. For by means of such condition, the Territory would have retained a hold upon the lands which would have enabled it to enforce their application to the construction of roads.

It might be permissible, though not provident, for the Territory to pass all the other lands without any other conditions than those imposed by act of Congress, for those conditions sufficiently protected those lands from application to any other use, than the construction of roads. Is it to be presumed that the Legislature intended to attempt the exercise of a power, no clearer than that to transfer the 120 sections at once, and unconditionally, without their being applied, and without any effectual security for their application to the purposes of the trust, but at most upon the bare expectation that the company would so apply them?

The act has no provision for a forfeiture or a resumption of the lands by the State.

To have granted a present title to the 120 sections unconditionally, and without any security for construction of roads,

would have placed those sections where they might be squandered or diverted from the use for which the act of Congress intended them.

The company might have sold them and appropriated the proceeds to any purpose, and then, if it had deemed the earning of the remainder of the lands, by construction of roads, not a desirable investment, it could have let the ten years prescribed in the act of Congress pass without expending a dollar for that purpose, and what penalty would it incur? Nothing but the forfeiture, not of the 120 sections, or the squandered proceeds, but simply of the right to earn and receive lands, which it did not deem worth the cost of earning.

Had the Legislature, under the act of Congress, authority to give away the lands in that way? Would such a transfer perform the condition of that act, that the lands, all of them, "shall be held by the Territory or future State of Minnesota, for the use and purpose 'of construction of roads?'"

And if, strictly, it had authority to make such a disposition of them, can it be supposed that in view of the trust, it intended, in the act of 1857, to put the lands in that position?

The provisions mentioned in section three and contained in section twelve, must have been inserted to prevent the possibility of such a result.

As the plaintiff's case is based on the proposition that the title IN PRESENTI to the one hundred and twenty sections passed to the Company, discharged of the trust by the act of May 22d, 1857, his case must fall, with the failure of that theory.

V.

IF THE TERRITORIAL ACT OF MAY, 1857, VESTED AT ONCE IN THE COMPANY, THE TITLE TO THE 120 SECTIONS, WHICH THE TERRITORY HAD THE POWER TO SELL AT ONCE, THOSE SECTIONS, AS WELL AS OTHER LANDS, BECAME, BY THE CONSTITUTIONAL AMENDMENT, LIABLE TO BE FORFEITED TO THE STATE, LIABLE TO HAVE THE TITLE VESTED IN THE COMPANY DEFEATED, AND REVESTED IN THE STATE, AS THOUGH THE GRANT HAD NOT BEEN MADE.

That forfeiture was incurred by the company's failure to construct the prescribed amount of road, before the expiration of the year 1861. And the forfeiture was enforced by the State, by the acts of March 10, 1862, of Feb. 28, 1863, and the act of 1864, granting the lands to these companies. That forfeiture was intended to, and did defeat any rights by whomsoever acquired, accruing after the original grant.

After the passage of the Territorial act of May 22d, 1857, the old companies, to which the lands were granted by that act, did nothing whatever towards the construction of their respective roads, beyond locating portions of their lines, till April, 1858, about a year after the passage of the act. It having become apparent that these companies, unassisted, could not and would not effect the purpose of the act of Congress, to wit: the construction of the roads with the land, and that consequently the land grant would be defeated, it was then proposed that the State should lend the companies aid.

The people assented to render this aid—by loaning to the companies the bonds of the State—so that they might by sale of the bonds raise funds sufficient to put the respective lines in such condition, that the companies would be able by mortgages of their property or otherwise to obtain the further funds needed to complete the roads. This was provided for by the constitutional amendment, adopted April 15, 1858. Of course it was competent for the State to extend any proposed aid to the companies, upon such terms and conditions as the people chose to impose.

The amendment was adopted for the "purpose of expediting the construction of the lines of railroad." The State was the

trustee under which the companies held whatever title they had in the land, and it must be presumed that the offer of aid was made as well because of the State standing in that relation to the lands and companies, as because of its sovereign character of a State having the interests of its people in view.

The failure of the companies thus far showed that there was danger that the trust reposed by Congress in the Territory and State would not be performed, and convinced those who framed the amendment and the people who adopted it, that the hold upon the lands and control over the companies retained in the State as trustee by the act of May 22, 1857, was not sufficient to enable it to make sure that the roads would be constructed with the lands. That act made no provision for a forfeiture in case of default. The 4th section, chapter 3d, required this company to complete a designated portion of its road within four years, but the consequences of a failure are not defined. There is no provision for a resumption by the State of any part of the lands granted, even though the company should not complete a mile of road.

The only provision for resumption or forfeiture was in the act of Congress granting the lands to the Territory, and that provided only for a forfeiture to the United States of the lands remaining unsold, if the roads should not be entirely completed at the end of ten years. Under the law as it stood when the amendment was adopted, there was no power in the State, the trustee—however dilatory the companies might be in constructing the roads, however certain it might at any time become that none would be completed—to take the lands and either construct the roads itself with them, or confer them upon some person or company who would apply them to the construction of the roads within the time prescribed by the act of Congress. That the act of May, 1857, was in this respect, no matter what construction may be put upon it as to the time when the title to the 120 sections passed, an improvident act on the part of the trustee is certain.

And it was to correct this mistake, made in that act, that the forfeiture clause was inserted in the amendment. The way in which it was thought best to correct the mistake, was to do what ought to have been done in the act of May, 1857, to wit: attach to the tenure by which the companies held the rights

granted by that act, such a condition as would make their right to hold them depend, to some extent at least, upon the companies' faithfully and seasonably performing what they were to do, and as should enable the State, in case of their failure to do that, to have it done by others, and to use the lands for that purpose.

The amendment attached to the company's title, as a condition subsequent, that it should complete not less than fifty miles of its road on or before the expiration of the year 1861; not less than one hundred miles before the year 1864; and four-fifths of the entire length of its road before the year 1866; and that "any failure on the part of any such company to complete the number of miles of its road or roads in the manner and within the several times herein prescribed, shall forfeit to the State all the right, title and interest, of any kind whatsoever, in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them constructed, AND A FEE SIMPLE TO WHICH HAS NOT ACCRUED TO EITHER OF SAID COMPANIES BY REASON OF SUCH CONSTRUCTION, which was granted to the company or companies thus failing to comply with the provisions hereof, by the act of the Legislature of the Territory of Minnesota, vesting said lands in said companies respectively."

Each company accepting the aid tendered under the amendment, consented to this condition being attached to its title, and to hold the rights granted by that tenure.

It was intended that the condition should attach and take effect precisely as though it had been inserted in the act granting the lands to the companies.

It may, perhaps, be claimed that, by the common law rule, a cause of forfeiture of title must inhere in the title as it vests in the grantee, must be created at the same time with the grant, and that if an absolute title once vests, a subsequent agreement between the grantor and grantee for the performance of some act on the part of the grantee, and for a revesting of the title in the grantor, upon default to perform the act, is in the nature of a penalty, which must be enforced by the judgment of a court, and not of a forfeiture or defeasance of the title which becomes operative by act of the parties. This is

the technical rule at common law depending upon technical rules applicable to transmission of titles.

The constitutional amendment was a statute abrogating that rule so far as it might have applied to these cases: an enabling act enabling the parties to attach to the title a cause of forfeiture or defeasance.

The clause was inserted so that upon default of the Company to construct the roads and save the land grant, the State might provide at once for that being done by other means, and as the grant was short lived, only a little over six years, being left after the first forfeiture could accrue, within which to construct the roads and save the grant, it can not be supposed that the State intended to provide for only a penalty upon which the State could resume control of the property, only after perhaps a long and tedious litigation, instead of taking it at once, as would be necessary for the accomplishment of the object with which the clause was inserted.

The title to be forfeited is not that which the companies may have at some future time, after the mortgage to the State, for instance, nor even that which they might hold at the date of the amendment, but "all the right, title and interest of any kind whatsoever * * * which was granted to the company or companies * * by the act of the Legislature of the Territory of Minnesota, vesting said lands in said companies respectively."

And to further facilitate the construction by the State of the respective roads, in case of default by these companies, the amendment provided for a forfeiture of the franchises.

This part of the clause is awkwardly expressed, but it was undoubtedly meant to include the corporate franchise, as well as the franchise to construct and operate a railroad, pertaining to the uncompleted portions of the roads. This forfeiture would sweep away the old companies from the uncompleted portions of the roads, and so prevent them being any embarrassment to the State, in its efforts to procure a construction of the portions of the lines left uncompleted by the old companies.

As to the lands, this forfeiture would of course operate as a defeasance of the title acquired by the company through the act of May 22, 1857, and upon being enforced it would, as to the forfeited lands, restore the parties to their status prior to

the passage of that act; the lands would re-vest in the State as trustee, as well the 120 sections as the other, even if the title to those sections absolutely vested in the company by that act. It would not be a forfeiture, if the title which was to re-vest was any other than that held by the State when the act referred to was passed, but would be the acquisition of title from the company. Even if the title to the 120 sections passed to the companies unconditionally by the act of 1857, and if, as claimed by the plaintiff, that transfer executed the trust as to those sections, there was nothing to prevent the companies and the State, agreeing that the sections should be restored to the trust fund, and brought again under the power of the State as trustee.

The forfeiture clause had that effect as to those sections, if the position of plaintiff as to the effect of the act of May, 1857, is correct.

The forfeiture accrued January 1, 1862, by the failure of the company to complete any portion of the road, and all its property described by the forfeiture clause came back to the State.

According to defendant's construction of the act of May, 1857, this company at the date of the forfeiture, had nothing but its franchises and its right to earn and secure the lands by construction of road.

According to plaintiff's construction, it had of the lands the absolute and unconditional title to the 120 sections pertaining to each of its lines; 240 sections in all.

And the plaintiff further claims that such 240 sections were not included within the intention of the forfeiture clause.

As to the power of the State to extend that clause over them, with the assent of the company, it would be almost absurd to attempt an argument. Upon plaintiff's theory, they were granted to the company without consideration, and merely upon the expectation or understanding, that it would apply them to the construction of road. An agreement making such construction a condition of the company's right to hold them under the original grant from the State would seem no great stretch of power.

It seems that the possibility of the claim being at some time made, that the companies acquired under the act of May, 1857, some right in the 120 sections for each road, different from

their rights in the other lands, presented itself to the minds of those who framed the amendment, and the amendment was framed with reference to such possible pretension, and for the purpose of excluding any claim that those sections were not liable to the forfeiture. The property to be forfeited is "all the right, title and interest of *any kind* whatever in and to any *lands* * * not pertaining or applicable to the portion of road by them constructed, and a fee simple to which has not accrued to either of said companies by reason of such construction" Here is what may be termed a double description of the lands intended to be forfeited.

First. A general description as "any lands," with the exclusion from it of those pertaining or applicable to the portion of road by them constructed—this exception means those which have been assigned to the companies for constructing the completed portions of the road.

Second. A particular description of the lands as those, "a fee simple to which has not accrued to either of said companies by reason of such construction." The two descriptions are the same in substance, although differently expressed.

Do the 120 sections for each line, if granted unconditionally as claimed by plaintiff, come within the lands excepted from the operation of the forfeiture.

"Lands pertaining or applicable" to any portion of road constructed, are lands which, when a company should complete a division of twenty continous miles of road, it would be entitled to by reason of the construction of that portion or division of road. The 120 sections, if granted, not for any portion or division of road, but without any construction at all, do not answer this description of excepted lands. But the 120 sections do come within the particular description of those to, be forfeited, to wit: "and a fee simple to which has not accrued by reason of such construction." Under the 12th sec. ch. 3, of the act of May 22, 1857, a fee simple would accrue to this company, upon its completing a division of twenty continuous miles of road and the certifying of that fact to the Secretary of the Interior, to the lands pertaining or applicable, under the act of Congress, to those twenty miles, and it would accrue by reason of the construction of that division of road.

The companies' right, title and interest of any kind what-

soever in and to lands, the fee simple to which had not, because of non-performance of conditions precedent, accrued to the companies, were to be forfeited.

And their right, title and interest in lands, if any such there were, to which they had acquired a fee simple, not by reason of construction of the completed portions of the roads, were likewise to be forfeited.

If there were any lands, as plaintiff claims was the case with the 120 sections, the title to which accrued to the companies *eo instanti* upon the passage of the act of May, 1857, such title did not accrue by reason of construction, but without any construction. Congress assigned six sections per mile to the entire lengths of the roads. The Territorial Legislature intended that the companies should receive six sections per mile for completed road. The people, in adopting the amendment with the forfeiture clause, intended to deal justly and fairly by the old companies, and to exact a forfeiture of only so much as should be absolutely necessary to enable the State, in the event of a default, to have all the lands applied to the completion of the roads at the rate of six sections per mile. They might, when putting the companies in funds for going on with the work, have insisted that it should be on condition that the companies, in case of default as to any part, should forfeit everything. Instead of that, it is provided in the amendment, that if at the time of any forfeiture, any company should have completed any portion of its road, and the fee simple to the lands pertaining or applicable to such portion should have accrued to the company by reason of such construction, the company, notwithstanding its default as to the remainder of its road or roads, should retain the portion completed, with the franchises pertaining to it, and also such lands. But that it should forfeit all the rest.

Upon plaintiff's construction of the act of May, 1857, the title to 120 sections to each line vested in each company, at once. If, after the adoption of the amendment, it had completed a division of twenty miles, the title to another 120 sections would have vested; and then upon his construction of the amendment, if it had stopped and incurred a forfeiture, it would have kept the 240 sections, or twelve sections per mile, for only twenty miles of road, and left the remainder of the

line short 120 sections of what was intended for it by the act of Congress and the act of the Legislature.

The people, in adopting the amendment, intended to preclude the possibility of any such result.

Plaintiff argues, that because the State was to take as security against liability upon the bonds to be issued by it to the companies, a lien, by conveyance, deed of trust or mortgage of the first 240 sections, which each company might be authorized to sell, it must be implied that the forfeiture was not intended to operate against those sections, although they are included within the language of the forfeiture clause. His argument is in substance this : that the State did not intend to take the absolute title to the lands by the forfeiture, for that would extinguish the mortgage. In other words, that it may have been considered that the absolute fee of the lands would be of less value than a lien upon them.

And he insists that such an extinguishment of the State's lien would "overturn and make void the entire scheme." His idea seems to be that the "entire scheme" of the amendment was to provide for the creation of a State debt, and get indemnity for it.

Neither the provision for security to the State against its bonds, nor that for the forfeiture, embraces the entire scheme or the leading and controlling intent of the amendment; and the only object there can be in comparing the two provisions, is to ascertain which accords most with the successful accomplishment of that leading and controlling intent.

For if one will tend in an anticipated contingency to promote and assist in such accomplishment, and is evidently inserted for that purpose, and the other in the same contingency to obstruct and defeat it, the former is the more important provision, and must prevail, if both cannot stand.

The purpose of all this legislation: of the act of Congress; of the act of May, 1857; of the constitutional amendment: was the construction of the roads. This was the primary purpose and intent of the amendment. The creation of a State debt, by issuing the bonds to the companies, was only a means adopted to accomplish that purpose; the forfeiture clause was inserted to enable the State to accomplish that purpose, if the loan of the State bonds should fail to produce that result.

The provision for security to the State was a mere incident, not at all inserted to assist in the accomplishment of the primary purpose of the amendment.

It would require clear terms in the amendment, to show an intention that a mere incident to one of the means adopted to accomplish the purpose intended, should defeat or impair the efficiency of the means provided as an alternative in case the first failed. The first means provided was the loan of bonds to the companies; the second and alternative means, to become operative upon failure of the first, was the resumption of the lands by the State.

It would be singular if the security to the State, a mere incident to the first of these means, should prevent or control the operation of the other in the contingency provided for it to become operative.

It was believed, undoubtedly, that the State lien might be enforced, if necessary, against the 240 sections, without interfering with the forfeiture clause, because it was expected that, with the aid extended by the State, the companies would each construct enough road to acquire and have the unencumbered right to sell 240 sections by reason of such construction, and thus save the requisite quantity from forfeiture.

It is further claimed, that if the 240 sections were within the forfeiture clause, yet the title was to be forfeited, subject to the lien of the State, and that the lien was to be kept alive, notwithstanding the revesting, by the forfeiture, of the fee in the State.

If the Territory, by the act of May, 1857, granted to this old company 120 sections for each of its roads, unconditionally and without any consideration, but only on the faith or expectation that it would go on and construct roads, and this is what plaintiff claims, then we say that was not as to those sections, a proper execution of its trust on the part of the Territory.

And if such was the effect of that act, it differed in that respect from the act considered in *Schulenberg vs. Harriman*, which vested the title to the lands only on the precedent condition of the construction of road, and, also, from that considered in *Courtright vs. The Railroad Company*, which

contained conditions subsequent, upon breach of which the lands might be resumed by the State.

If the Territory had, as claimed by plaintiff, without any road being constructed, wholly parted with its control over the 120 sections, so that it was beyond its power to direct the application of those lands to the construction of roads; it was its duty whenever opportunity should offer, to reclaim such control and retain it to enforce the application of them to the purposes of the trust.

This the State did through the forfeiture clause; that was the purpose of the clause.

We insist that in reclaiming such lands to the trust, the State had no right to provide for any interest of its own, not as trustee, as a lien upon them, which might defeat the trust or take the lands out of the trust for other uses.

This would be the effect of making any lien of its own override the title which was to revest in it as trustee through the forfeiture clause; the clause which restored the power of the State to direct the application to the construction of the roads, of any lands over which it had lost that power, if any such lands there were.

The State never meant to load the forfeiture with any condition which might defeat or obstruct the purpose of it. The entire legislation of the State in this behalf, commencing with the act of May 22, 1857, and ending with that of March 4, 1864, has had but one main end in view, to-wit: The construction of the roads with the lands; and in that series of legislation everything not expressly directed to that end, is subordinate to it. The State has never asserted any claim that could by any possibility impede the accomplishment of that end.

The remarks we have made upon the proposition, that a part of the lands were not subject to forfeiture because of the State's lien, are equally applicable to the proposition, that the title which was to be forfeited should be subject to liens which might defeat it. To exclude any part of the lands from the forfeiture, by providing for the preservation of a lien upon them, which might defeat it, is liable to the same objection as their exclusion in any other way.

No argument can be made in favor of the proposition that the lien of the State, under the mortgage of the 240 sections,

was to be excepted from the forfeiture, which is not equally applicable to the proposition that the lien of the State, under the general mortgage upon all the company's property, should be excepted. If the forfeiture of the 240 sections was to be subject to the mortgage of those sections, then the forfeiture of the other lands and franchises was to be subject to the general mortgage of the company covering them. The lien of the State under that general mortgage was $575,000, and might have been $1,250,000; and that lien is provided for in the constitutional amendment.

The nature of the plaintiff's proposition, that the amendment intended the forfeiture to be subject to the lien, is made more apparent by another proposition, without which his case falls; viz: that a party receiving the State bonds from the company, would become entitled to the lien by subrogation, that is, that when providing for revesting in the State "all right, title and interest, of any kind whatsoever, in and to any lands," which was granted to the company or companies "by act of the legislature of the Territory of Minnesota," and doing this for the purpose only of placing the State in such position that it could grant such right, title and interest in and to such lands to other companies who would complete the roads for such lands, it intended to load the right, title and interest so to be revested, with a lien which, by the act of the company with a stranger, would be put beyond the power of the State to release. And inasmuch as the amendment contemplates that the companies shall each execute a first mortgage, which, as decided by the Supreme Court of the State in the *Railroad Co. vs. Sibley*, 2 *Minn.*, 13, need not be confined to the bonds to be delivered by the companies to the State, but might be for the companies, bonds to any amount (short of a fraudulent issue) issued to others as well as to the State, the plaintiff's propositions would save that entire mortgage, and make the forfeiture subject to it.

Under his construction of the amendment, if the company had continued to provide for the interest of the State bonds, so that there could be no foreclosure, and it completed no road at all, and so incurred a forfeiture, what title would the State, as trustee, have had, under the forfeiture, to enable it to carry out, with such title, the purposes of the act of Congress? What could it have transferred to a new company to induce it

to construct the road? Only this, the naked fee, encumbered with a lien on all the property of the company, which the State could not release, for $575,000, certainly, and probably for the whole amount of the bonds issued by the company under its mortgage.

What new company could reasonably be expected to take a title burdened with such incumbrances, and attempt to construct the roads, when the old company had failed? Certainly none. The lien taken by the State, on plaintiff's construction, would prevent that, and so defeat the construction of the roads. No use could be made by the State of a title so encumbered.

The amendment never intended that the title which was to revest in the State by the forfeiture, should be so encumbered. The purpose of the provision for redemption was that the State might then use the lands to complete the roads. It could not have been intended that that purpose should be defeated or even jeoparded by any other provision of the amendment; certainly not by any provision not inserted to secure the accomplishment of the sole object which induced the adoption of the amendment, to-wit, the construction of the roads. It was intended that the title, just as it was at the passage of the act of May, 1857, without any diminution, and just as available to the State as trustee, should revest by the forfeiture, so far at least as agreement between the State and companies could accomplish that result. The description of the title to be forfeited is, "all right, title and interest of any kind whatsoever," which was granted by the Territory to the companies. To fill this description, all rights, titles or interests attaching between the grant by the Territory to the companies, and the forfeiture, must be swept away. And to put the State in position to use the lands in securing the construction of the roads, it was necessary that the lands should be freed from all such rights, titles and interests.

That it might have been intended that, notwithstanding the revesting in the State of the title passed to it by act of Congress, and the restoration as between the State and the companies of the condition of things as respected the title, existing before the passage of the act of May, 1857, the State should have the right to assert, if it should deem best, a lien upon the property as against the forfeiture, that the State should be able,

if the public interests required it, to insist that there should be no merger of the lien in the title revesting by the forfeiture, is a proposition which, although we deny it, falls far short of what the exigencies of plaintiff's case compel him to claim.

It does not suit him to claim that the lien was to be saved, if it was to be saved, only subject to the power of the State over it—subject to its power to release, or to prevent it to be extinguished or merged. He must insist, and does insist, that the intention of the amendment in providing for security to the State, and for the forfeiture, was that as against the forfeiture the security should prevail, not merely in favor of the State itself, and subject to its control, but in favor of other persons then unknown, and to the exclusion of the power of the State to control or release such securities.

Certainly there could have been no such intention, unless it was contemplated by those who adopted the amendment, that others beside the State should or might, by virtue of its provisions, acquire an interest in the securities, and such an interest as would be, not subordinate to the power of the State, over the securities, but such as would override that power and prevent its exercise, except in the exclusive interests and for the exclusive benefit of such persons. Under what provision of the amendment could the people have contemplated the acquisition of such an overreaching interest by third persons?

What third parties could it have been supposed might, by the provisions of the amendment, acquire any interest in the securities?

Of course it was intended that the State bonds should be put upon the market, and sold just as other State bonds are sold, and that the purchasers should buy just as other State bonds are bought, relying upon the faith and credit of the State for payment of the interest and principal. Any one putting bonds upon the market, expecting purchasers to rely upon anything else, would be disappointed, and if in order to give value and currency to the bonds, he should point out that the State had an arrangement with some person by which such person had agreed to advance the money with which the State might pay the bonds "in such manner as to exonerate the treasury of the State from any advances of money for that purpose," and who had given to the State as security for that purpose, a lien upon

property, a lien which the bondholders could not compel the State to enforce, he would be further disappointed. Every purchaser of such bonds relies upon the honesty of the State and its general resources to meet its obligations, and never upon its power to apply specific property to the payment of its bonds.

No one voting on the amendment could have supposed that any purchaser of the bonds would expect to acquire, or could under the amendment acquire, in the property pledged to the State as its indemnity, any interest other than that which he would have in its general property and resources, or that under the amendment any relation could arise between the State and the purchasers of the bonds, other than that of debtor and creditor.

It would be absurd to claim that it could have been contemplated that the provisions of the amendment would enable any one of the thousands of persons into whose hands the bonds, passing from hand to hand, might at any time come, to interfere with such disposition of this land grant property, or any of it, as the Legislature might find that the public interests, or the interests of the trust created by the act of Congress, should require.

No such possibility could have affected the intention of the people, upon the provisions of the amendment for indemnity and forfeiture.

The plaintiff claims that there exists between him and the old company and the State, the relations of creditor, debtor and surety; and upon these assumed relations, he mainly bases his claim of subrogation to the lien which the State took.

Such relations could not arise upon a mere sale of the bonds, passing the title to the purchasers, such as is provided for in the amendment.

But it arose, says the plaintiff, by reason of the company's endorsement of the bonds, whereby it secured to itself the position of a debtor upon them, and as they are accommodation bonds, it is the principal debtor, and the State surety.

The creation of no relations on the bonds, between the State and others, but those of debtor and creditor, and the attaching with respect to them of no rights or obligations, except those pertaining to debtor and creditor, is authorized by the amendment.

An endorsement which would *make* the company a debtor on the bonds is not contemplated by it.

The amendment provides as to the bonds, that "they shall be signed by the Governor, countersigned and registered by the Treasurer, sealed with the seal of the State, of denominations not exceeding one thousand dollars, payable to the order of the company to whom issued, *transferable by the endorsement of the President of said company*," &c.

The only endorsement contemplated, was one made by the President, not by the corporation, and for the purpose only of passing title, and not for the purpose of creating a liability against the corporation.

On such an endorsement the title would have passed to the purchaser, and the company's connection with the bonds ceased.

If the company has made an endorsement which retains it as a party to the bonds, it is a case not contemplated in nor provided for by the amendment, and the relations, rights, duties and obligations growing out of it were never considered by those who adopted the amendment, and cannot be taken into account in determining what the people intended by the indemnity clause or the forfeiture clause.

By a constitutional amendment adopted in 1860, the amendment of 1858 was expunged, "saving, excepting and reserving to the State, nevertheless, all rights, remedies and forfeitures accruing under said amendment."

This amendment could not affect the issuing of further bonds to the companies, because by the terms of the original amendment, the companies, having made default on those already issued, no more of the State bonds could be issued. It could not invalidate those already issued, for that would impair the obligation of contracts.

All that remains, besides these two matters and their incidents, are expressly excepted from the expunging by the saving clause.

So that it would be hard to say, what, if anything, was effected by the expunging amendment.

The plaintiff claims, however, that its effect was to prevent a forfeiture, notwithstanding the saving clause, and insists that only rights, remedies and forfeitures, accrued by reason of

acts already done, were saved. But the clause must, if possible, be construed so that the saving, excepting and reserving of "forfeitures accruing" shall have effect.

That exception can have no effect but by referring it to such forfeitures as, according to the original amendment, were to accrue. For none could have accrued by the terms of the original amendment till January 1, 1862. The right to a forfeiture in case of future default accrued to the State upon the acceptance by the companies of the conditions imposed by that amendment. That was the tenure by which the company held its lands. A repeal of the law under which the condition was attached, would not change the nature of the companies' title.

After the decision in *Smith vs. Maryland*, 6 *Cranch*, 286, and *United States vs. Repentigny*, 5 *Wall.*, 211, we will not argue that, upon a forfeiture to the State for condition broken, a legislative act appropriating the land as the property of the State is equivalent to office found. The property revests in the grantor upon the breach of the condition. But he may waive such forfeiture; and it has become a rule of law, that he is held to waive it until he asserts the contrary by some unequivocal and notorious act, such as, in the case of a private person, a re-entry, and in the case of the State, office found, a judicial determination, or an unequivocal legislative assertion of title to the forfeited property.

Such legislative act neither impairs the obligation of a contract, nor takes property without due process of the law. For by so appropriating the property for breach of condition in the grant, the State is merely asserting and exercising a right given by the contract, and using property which, by such contract, has become its own.

In the *Repentigny* case, the legislation of Congress was an unequivocal assertion of ownership of the property, but made no reference to the forfeiture.

This case goes further. The legislation of the State not only amounts to an unequivocal assertion of ownership of the property, and the right to dispose of it, but asserts title in the State by reason of the forfeiture.

The first in the series of acts on this point, is that of March 8, 1861, (*p.* 219, *Record*). By that act there was to be held in trust, to be granted and continued to parties named, all the

rights in the property acquired by the State by virtue of any acts, deeds, sale or foreclosure. At this time the property had been purchased by the State at the foreclosure sale. But there had been no forfeiture, and therefore the act makes no reference to rights acquired by forfeiture.

On Jan. 1, 1862, the constitutional forfeiture accrued, and on the 10th of March following, the legislature passed the second act in the series, (*p.* 223, *Record*). By that act, there was to be held by the State, to be granted and continued to the parties named, the rights, &c., recited in the act of 1861, and, also, all rights, &c., acquired by "reason of *any* forfeiture."

This was an assertion of the forfeiture under the constitutional amendment, for at that time there could have been no other. It is true, the act of 1861 contained a clause for forfeiture; but there could be no forfeiture under it, until there vested under it some rights or property for a forfeiture to operate upon. The act contains no words of present grant—the property is to be held in trust by the State—"to be continued, granted and transferred" to the persons named as corporators; and section six of the act makes it, in express terms, a condition precedent to the vesting in the parties named, of any right or title under the act, that they shall within a specified time deposit with the State Treasurer a sum therein named. The deposit was not made; the parties did not accept the act. The act was abortive; merely a tender, not accepted, to the persons named of certain rights, upon specified conditions precedent, never complied with.

There could be no forfeiture under the act, because nothing was taken under it. And the rights, &c., acquired "by reason of any forfeiture" mentioned in the act of 1862, could not refer to any thing occurring under the ineffectual act of 1861.

The act of 1862 was not accepted by the persons named in it; and February 28, 1863, a third act passed, (*p.* 228, *Record*,) making to the parties named in it a similar offer of the same property specified in the act of 1862, including all rights, &c., acquired "by reason of any forfeiture." This act was not accepted, and therefore effected nothing.

In 1864 (*p.* 233, *Record*,) the act under which the defendants claim, passed. It separated the two roads and the property

pertaining to them, and offered them to two different companies (these corporation defendants).

The property recited in it is the same as in the acts of 1862 and 1863, including rights, &c., acquired "by reason of any forfeiture." This act was accepted by the persons named in it, who organized the present companies, and proceeded and earned the property by construction of the roads, according to the terms of the act.

Thus the State, by three different legislative acts, asserted its right to the property by reason of the constitutional forfeiture.

It is claimed that the State rendered impossible the performance by the company of the condition subsequent, to-wit: the construction of the roads, by foreclosing the mortgage. It seems as though plaintiff thinks it was the business of the State to construct the roads, or at least to furnish the funds necessary to enable the company to retain them, so that it could construct them, as it had undertaken to do.

The company executed the mortgage which was foreclosed. One of the means for it to take to enable it to perform the condition, was the payments to be made under the mortgage, and the prevention of a foreclosure of it. If it failed to do this, and thus became unable to retain the roads and perform the condition, that inability was owing to its own default. The State took from the company two distinct and independent securities, for separate and independent purposes: one by the forfeiture clause, to ensure the construction of the roads; the other by the two mortgages, to indemnify it against its liability upon its bonds. No one could imagine that, to enable it to retain and enforce either, it would have to waive, in favor of the company, its right to retain or enforce the other.

VI.

THE FORECLOSURE OF THE GENERAL MORTGAGE IN 1860, BY THE STATE, AND THE PURCHASE BY IT OF THE PROPERTY SOLD AT THE FORECLOSURE, EXTINGUISHED THE LIEN OF THE PARTICULAR MORTGAGE ON THE 240 SECTIONS, AND VESTED THE LEGAL TITLE TO ALL THE PROPERTY IN THE STATE. THE STATE HAD THE RIGHT TO MAKE, AND DID IN FACT MAKE, THE PURCHASE FOR ITSELF. BUT IF PLAINTIFF EVER HAD THE RIGHT TO QUESTION THE PROPRIETY OF THE STATE PURCHASING FOR ITSELF, OR TO CLAIM THE TITLE SO ACQUIRED BY THE STATE, HE HAS LOST THAT RIGHT BY LAPSE OF TIME, AND BY EXPRESS ASSENT TO, AND ACQUIESCENCE IN THE ACTION OF THE STATE.

The securities provided for in the constitutional amendment are properly ranged in this order of precedence.

First: the security provided to protect and insure the primary purpose and intent of the amendment, must take precedence of the merely incidental securities. That primary security was the forfeiture clause.

Of the incidental securities; those taken to indemnify the State against the bonds issued to the company, the particular mortgage, that upon the 240 sections, comes first in order of precedence.

1. The plaintiff in his brief, treats this as an absolute conveyance to the State, and not as a mortgage lien created to indemnify the State.

The constitutional amendment required a conveyance "*in trust for the better security of the treasury of the State, from loss on said bonds*" (the State bonds), and provides that in case of default, the Governor shall proceed in such manner as shall be prescribed by law, to sell the bonds of the company, or the lands held in trust under the deed. In equity, such a deed, in whatever terms it may be expressed, is a mortgage. In Minnesota such a deed is, at law, only a mortgage, the mortgagor still being the owner of the legal estate, and the mortgagee having only a lien, and not an estate or interest in the land.

The feature in which it differs from an ordinary mortgage is,

that it contemplates that before any default, lands may, both parties concurring, be sold, and the proceeds take the place, under the mortgage, of the lands sold.

And when this deed was executed, it was in the form of a mortgage, (*pages* 5, 6 *and* 7, *Record*), differing from the usual form only in providing for sales of lands before default, and the substitution of the proceeds in the place of the lands sold. It contains a power of sale by which to foreclose, and a clause *p.* 7) that on performance of the conditions which it is given to secure, the "instrument" shall be and become wholly null and void, and the same terminate, be annulled and cancelled, without any act or deed to be done or performed by the party of the first part or the party of the second part, and the said two hundred and forty sections of lands, or such portions thereof remaining unsold, and all right, title, claim, interest and demand thereto in law and equity, shall revert and be revested in said party of the first part as fully and as perfectly as if this instrument had never been executed.

Next comes the general mortgage of the company upon all its property, including the 240 sections. In this mortgage, the State was interested to the extent of the company's bonds deposited with it to indemnify it against its own bonds.

Those bonds amounted to $575,000. The two mortgages were given for the same purpose; to secure the same debt or liability.

The mortgage of the 240 sections was prior to the other in this sense: That if the State had foreclosed that prior mortgage, and procured a sale of the 240 sections upon such foreclosure, the lands would have been thereby taken out of the general mortgage. But it was not prior in the sense that the State might sell the 240 sections upon foreclosure of the general mortgage, and then sell the same lands again under the first mortgage for the same debt.

The remedy of the State for the bonds which it had issued against the 240 sections of land, was exhausted by its sale of those sections. If a party has two remedies against the same property to secure the same debt, he may elect which he will pursue; but having pursued one of them to a sale of the property, his right to pursue the other to a sale of the property is gone; his remedy against the property is exhausted. Although

one may have by each of several different instruments a lien upon and power of sale to enforce the lien against the same lands to secure the same debt, he can sell but once, though he may elect under which he will sell.

It would be absurd to say that he may sell under one, and then defeat the title he passes under that sale, merely by selling under another of the instruments which happens to be prior in date to that under which he sold first.

This is not the case of a mortgagee, who has two mortgages upon the same property, to secure different debts—and the question does not arise whether such a mortgagee can sell the land for payment of the debt secured by the last mortgage, and afterwards enforce the first mortgage against his purchaser. The case is precisely that of one who, to secure his debt, takes a mortgage upon certain lands, and afterwards takes another mortgage to secure the same debt, upon the same lands with other lands, and who pursues to a sale of all the lands, the remedy furnished by the last mortgage.

The lien, therefore, of the State under the mortgage on the 240 sections, merged in or was extinguished by its foreclosure and sale of those sections, under the general mortgage, and after such foreclosure the State had in those sections, as in all the granted lands, two interests.

First. As trustee, under the act of Congress, in whom the original title might revest by a forfeiture.

Second. As owner, in its own right, under the mortgage and foreclosure, the latter interest liable to be defeated by the forfeiture.

The plaintiff may claim that it would have been more for the advantage of any one interested in the State bonds, if the State had first proceeded to a sale of the 240 sections under the particular mortgage upon them.

But under the provisions of the amendment, the State, which was certainly as much interested to realize out of the securities enough to pay the State bonds, as the holders of those bonds were, had its election to proceed, by sale of the 240 sections, under the mortgage or deed of trust, or by foreclosure of the general mortgage. The plaintiff acquired his interest, (if he

ever had any,) in the securities subject to this right of election, and as the bill does not allege that the right of election was not *bona fide* exercised, he cannot complain, but must accept the situation in which that election placed the property and the parties.

And as to the title which passed to the State by the foreclosure, we understand the plaintiff's claim to be expressed by the following propositions which he, in substance, makes:

First. That applying to the case the equitable doctrine of subrogation, he, upon the sale and endorsement by the company to him of the State bonds, became entitled to the benefit of all the securities which the State had taken to indemnify it against its liability to pay them.

Second. That thereupon the State, holding these securities, became a trustee to hold and enforce them for him, and to pay over to him, to the extent of the bonds held by him, any moneys, realized in enforcing those securities.

Third. That by reason of its being trustee, the State was incapacitated to purchase and hold the property against the plaintiff, upon foreclosing the mortgage, and,

Fourth. That as it did become such purchaser, the sale was voidable at his election, and that he might elect either to affirm the sale, and the purchase by the State, or claim the property so purchased, either from the trustee, the State, or any person deriving title through it, with notice or without consideration.

For the purpose of presenting a full answer to the claim, based on these propositions, we will, in this place, concede them all to be correct.

Conceding this, the State, by its purchase at the foreclosure, got the entire legal title discharged of the liens which the *cestui que trust*, this plaintiff, had the option to permit it to retain, or to insist that it should be transferred to him, or perhaps the further option to have the sale vacated and a re-sale had.

To this option was attached this condition, that it should be exercised within a reasonable time after he acquired knowledge of the facts.

"A purchase by a trustee is not absolutely void; but voidable at the election of the *cestui que trust*, if he is dissatisfied with it, *and, in a reasonable time after a knowledge of the fact, impeaches its validity.* But if after such knowledge, he confirms the sale, or *unequivocally acquiesce in it*, it will stand ratified by the general principles which prevail, as well in courts of law as of equity."

Prevost vs. Gratz, 1 *Peters' Cir. Ct. Rep.*, 364–8.

Bergen vs. Bennett, 1 *Caine's Cases*, 1.

Jennison vs. Hapgood, 7 *Pick.*, 1.

Campbell vs. Walker, 5 *Vesey*, 678.

Harden vs. Parsons, 1 *Eden.*, 145.

Sugden on Vendors, 8*th Am. Ed.*, 687 *and note.*

No court has attempted to define what, as a general rule, is a reasonable time, or what lapse of time, when there is nothing but that, will bar the election of the *cestui que trust.* Each case must depend upon its particular circumstances.

In *Roberts vs. Tunstall*, 4 *Hare*, 256, 18 years was held to bar the election of a *cestui que trust* to avoid a sale, while the relation existed, to his trustee.

In *Champion vs. Rigby*, 1 *Russ and Milne*, 539, 18 years was held to bar the right of a client to avoid a conveyance made by him to his solicitor.

In *Bergen vs. Bennett*, already cited, it was held, that a bill by a *cestui que trust* would not lie after 16 years, to set aside a mortgage sale where the trustee had purchased.

In *Jennison vs. Hapgood*, 7 *Pick.*, which was a suit to vacate a purchase of trust property made on his own account by a trustee eleven years before the bill was filed, the court say: "We are strongly inclined to think that such an acquiescence, under such circumstances, would be a sufficient answer." And it has even been intimated that three years would be a long acquiescence.

Fox vs. McCreth, 2 *Bro. C. C.*, 426.

If there could be a case in which the *cestui que trust* ought to be required to make his election within a very short time, this is such a case.

For the property purchased was of such a character, that it could not be held long to ascertain who was to be the owner of it.

The forfeiture under the constitutional amendment would accrue in fifteen months from the foreclosure, or if that forfeiture should not be enforced, the lands would, under the act of Congress, be forfeited to the United States in less than seven years, and to prevent that forfeiture, it was necessary not only to have the title determined, but the roads constructed within that time.

Lapse of time, however, is not necessary to bar the right to elect, although it may be to make the demand a stale one.

It is to be regarded as showing that the *cestui que trust* has waived his right to avoid, and has acquiesced in the purchase by the trustee.

In *Life Ins. Co. vs. Siddell*, 3 *De Gex., Fisher & Jones*, 58, it is said: "Length of time, where it does not operate as a statutory or positive bar, operates, as I apprehend, simply as evidence of assent or acquiescence;" and in *Roberts vs Tunstall*, 4 *Hare*, 256—"The right to open such a transaction is from the first merely equitable, and the court always considers delay, on the part of those who might have come immediately to rescind the transaction, as evidence of an intention to waive that right."

Acquiescence in a transaction may bar a party of his relief in a very short time.

Perry on Trusts, *Sec.* 870.

Where there is merely lapse of time, unexplained, the question always presented is, what length of delay to exercise the option will, under the particular circumstances of the case, fairly raise the presumption that the *cestui que trust* does not intend to avoid the transaction?

This will depend largely upon the situation of the parties, and the situation and character of the property. As,

if there is nothing in the situation of the *cestui que trust* to make delay expedient, less time would be required to raise the presumption than if he could not, without disadvantage, elect at once.

There was certainly nothing in the situation of the plaintiff, to make it inexpedient for him to elect immediately after the foreclosure, whether he would abide by the State's purchase.

And, if the property is valueless, or worth no more than the price paid by the trustee, so that there would be no advantage to the *cestui que trust* to avoid the transaction, the presumption will obtain in much less time than if the property be worth more than the price paid.

The courts do sometimes control the election of the *cestui que trust* by this consideration. It has been frequently decreed that the property be offered for re-sale, and that if no one bid more than the price paid by the trustee, his purchase to stand.

At the time of this foreclosure, and until twelve years after, until after the transfer had been made to these corporation defendants, and they, assuming the risks, of the enterprise had made the property valuable by expending their money upon it, the plaintiff undoubtedly did not consider it for his advantage to pay the costs of the foreclosure and take the property; he undoubtedly did not consider the property as of any value, and it undoubtedly was not until it was made valuable by these defendants.

The bill does not charge, and the proofs do not show, that the price bid by the State was inadequate, or that the property was then of any value The bill charges, though there is no proof to sustain the allegation, the value of the property in 1864, four years after the sale. The old company had attempted, under the act of May, 1857, to comply with the conditions upon which the property was to be held, and had failed. Then again, under the constitutional amendment, with the aid furnished by the State bonds, had renewed the attempt and lamentably failed. By the act of March 8, 1861, the State offered the property to certain

parties, or in case they did not accept, to any one who would accept (*Sec. 7 of that act, p. 223 of Record*), and no one would take it.

By the act of March 10, 1862, the State offered to give away the property acquired by the foreclosure, and also all rights acquired by forfeiture, and could not give it away.

It renewed the offer by the act of February 28, 1863, and failed. And in 1864, succeeded in inducing parties to take the property and undertake a compliance with the conditions, only by dividing it, and making two enterprises instead of one.

What rendered the property valueless as an investment, was the magnitude of the work to be done, and the short time, less than seven years after the foreclosure, and little more than five after the forfeiture to the State, within which the work must be done to avoid the forfeiture to the United States.

The character and situation of the property then, furnishes the strongest grounds for presuming without any great delay on the part of plaintiff, that he did not intend to take the property.

But the case furnishes clear proof that from the first, p aintiff positively assented to, and acquiesced in the purchase by the State.

As to the time between the foreclosure in 1860, and the grant to these corporation defendants in 1864, it may be claimed that because plaintiff could not sue the State, that time ought not to be counted as part of the time during which he has acquiesced in its purchase.

He could not sue the State, it is true, but he could do what is the substitute for a suit, in preferring a claim against a sovereign State; he could, by petition, set forth his claim, and ask the State to transfer to him the title it acquired at the foreclosure. It is presumed that a sovereign State will do justice, and there is no reason for supposing that if he had presented such a petition, the Legislature would not have transferred the property to him, if he would take

it upon the conditions to which it was subject. He did not so present his claim. He was present at the Legislative session of 1861; the first after the foreclosure, at which session the Legislature assumed the right to dispose of the property, and he also had an agent there, Mr. Shepard, to represent him. (*Dep. of Banning, p. 109 of Record*) Neither of them questioned the right of the Legislature to dispose of the lands, nor claimed that plaintiff had any interest in them. He claimed only that his State bonds ought to be paid. From the testimony of Mr. Banning, it appears that, in the session of 1861, there were in the legislature, two policies proposed with respect to disposing of the property; one for uniting in the same act, a grant of the property, with a provision for recognizing the validity against the State of the claims of the holders of the discredited or repudiated State bonds, by taking up those bonds and issuing in their stead other bonds which would be acknowledged to be valid, and this policy was that proposed, and advocated by those who represented the views and wishes of plaintiff; the other policy was to let the disposal of the property, and provision in regard to the discredited bonds, each stand upon its own merits, and to provide for each in a separate act. With this policy, plaintiff and his agent, Shepard, were content, when it was evident that the other could not succeed in the legislature. Both of these policies assumed the absolute power and right of the State to grant the entire property, free of all incumbrances.

Its power and right to do so was never questioned by any body, not even the plaintiff. There was never any proposition to provide for the construction of the roads, except by a legislative grant of the entire property, free of all incumbrances, to some company, upon condition that it should construct the roads—all of the other roads mentioned in the Territorial act of May 22d, 1857, and the constitutional amendment, stood, in the winter of 1860–61, in precisely the same predicament, as the Southern Min-

nesota. The State acted on the same policy with respect to all.

The act of 1861, disposing of the Minnesota and Pacific, some of the bonds issued to which were held by plaintiff, (*p.* 116, *Record,*) was accepted. To this grant plaintiff stood in just the same relation as to the grant attempted that session, of the property of the Southern Minnesota.

The State claimed the same powers and rights as to both In the year 1861, the firm of Winter, Harshman & Drake had taken a contract, under the company accepting the grant by the act of 1861, of the property of the Minnesota and Pacific, to construct a portion of their line, and in January, 1862, Mr. Drake (*p.* 104, *Record,*) had a conversation with plaintiff. Mr. Drake says: "I told Mr. Chamberlain, either in the coach or about that time, after we got here, what we had contracted to do, as I knew he had been interested in Minnesota railroads. He expressed a deep interest then, and always in the success of the roads. I told Mr. Chamberlain at the time, that we required legislation before we could go on, and that we were waiting the action of the Legislature to give us that legislation. I am unable to give the precise words, but Mr. Chamberlain expressed gratification that we were going on, and intimated that it would be a good thing financially; otherwise that it would be a good thing. During the pendency of this legislation, Mr. Chamberlain proffered his sympathy, and offered to aid us what he could to secure it."

This was his action and feeling with respect to the State's claim of absolute right to control property, that stood exactly as did that of the Southern Minnesota.

And as to all the roads acquired by the State, under the various foreclosures, hear Mr. Drake further: "I remember distinctly Mr. Chamberlain saying, that the State was wholly unable to finish the roads which it had acquired, *and the policy of the State, granting the lands and franchises to companies to complete the roads, was wise, and necessary to*

enable the State to pay her railroad bonds; that it would so increase her population and wealth that she would be able to pay them; and he expected it would be done."

The plaintiff was anxious to have the roads built as a means of securing the ultimate payment of his bonds. He knew that the roads could be built only by granting the lands and franchises, the property acquired by the foreclosures, to new companies. The previous winter, the legislature had acted on the policy of so granting the property, free of all incumbrances, and he approved of that policy as *wise and necessary.*

He made no question of the power and right of the State to so grant them. He pretended to no rights in, nor lien upon, the property. (*Dep. of Banning, p.* 110, *Record, and of Rice, p.* 116.) As late as 1871, when Mr. Sibley, who had heard rumors that some bondholders claimed some lien upon the lands, expressed to him surprise at such a claim; he concurred in the expression of surprise, and complimented Mr. Sibley upon, and did not in any way dissent from, a speech made by the latter in the session of 1871, in which he particularly denounced the idea of such a claim, and told him that speech was just his views.

(*Dep. of Sibley, pp.* 121, 122, 123, *Record.*)

Early in 1864, after the grants to these corporation defendants, immediately after the organization under that act of the Minnesota Valley, now St. Paul and Sioux City Railroad Company, and before it had expended any money upon the work, plaintiff had a conversation with Mr. Horace Thompson, then president of the company, and one of the corporators named in the act, and Mr. Merriam, also one of the corporators, and one of the directors under the organized company.

The conversation shows that plaintiff knew the act of 1864, and to what persons the grants had been made. And certainly, if he was dissatisfied with the action of the State in purchasing for itself, at the foreclosure; if he was not content to abide by that action; if he claimed that under a right of election, not yet exercised, he could claim the

interest, by purchasing at the sale. In that respect, the State and he stood equal.

But in another respect they did not stand equal. In addition to the relation in which the State stood to the mortgaged property, as security to it for the bonds it had issued, it occupied another and more important relation, and subject to which relation, and the rights and duties attending it, the plaintiff acquired his interest, if any, in the mortgage, and the mortgaged property. That relation was, as trustee, to hold and apply the property to the construction of the roads, pursuant to the act of Congress. The State had a right to protect its duty in that respect, and for that purpose to bid in the property It might become necessary, it is apparent that it had become necessary for it to do so, in order to enable it, by having immediate and complete control of the property, to procure the timely construction of the roads.

The rule disabling a trustee to purchase and hold trust property, is one within the power of the Legislature to change.

We admit, that when such a sale and purchase have been made, and the rights of the parties with respect to the transaction have become vested, the legislature can not take them away. But it may prescribe the rules for future sales of that character, whether the relation of trustee and *cestui que trust*, arose before or after the statute.

For that disability is no part of the contract. The rule is adopted merely as a means for the prevention of frauds.

To show that the act of March 6, 1860, (*p.* 197, *Record*) changed the rule, as to the cases of these railroad mortgages, and intended a purchase, if necessary, for the benefit of the State, we need only cite the language of the act:

"Sec. 2. Upon the sale of the property, rights and franchises, covered or embraced in such deed or deeds of trust, under such foreclosure hereinbefore mentioned, the Governor is hereby authorized and empowered, in his discretion, to bid off and purchase the same, *for and in the name of the State*, and to make or cause to be made to the State of

Minnesota, such suitable and proper conveyances as may be necessary."

But suppose we treat the conveyance of the 240 sections not as a mortgage creating a lien, liable to be cut out by the State in its sale under the general mortgage, or merged in or extinguished by the title acquired by the State upon that sale, but as a conveyance which vested the legal title in the State, leaving only a bare equity of redemption in the old company. In that case, the general mortgage attached to that equity of redemption, (*pp.* 8 *and* 9, *Record*), and that equity of redemption passed to the State upon its purchase at the sale under the foreclosure of that mortgage.

The constitutional amendment provided, that upon a default, the lands might be sold by the Governor, in such manner as might be prescribed by law. This was the law of the deed, whatever its form might be, and whatever further mode of selling might be provided by the deed itself: such further modes of selling, might be in addition to, but could not be in lieu of, the provisions in the amendment. Those provisions leave the manner of selling with the law making power, the Legislature and Governor: and any sale or grant by such power, by act of Legislature, is a substantial exercise of the power of sale, which the amendment reserves to the State.

The State having acquired, by the foreclosure sale, the only outstanding interest against the title or interest which it took under the conveyance, the old company, the only party which ever had any right to insist on any particular mode of sale, ceased to have such right. How the sale should be made was entirely in the discretion of the Legislature. The entire title to the land being thus in the State, it, by the act of 1864, conveyed such title, "free and clear of all liens thereon," to these corporation defendants.

So, if the State had not, under the forfeiture, nor under the foreclosure of the general mortgage, a free and clear title to pass, it had from those sources, and the convey-

ance of the two hundred and forty sections, all the title there could be, to transfer under the act of Congress, and conveyed all that title "free and clear of all liens thereon," to these defendants.

And of this the bill complains, that by that act, the State did, "in disregard and violation of said trust, and of the rights and equities of your orator, and of the other holders of the bonds of said State, issued to said company, grant, transfer, dispose of, and confer upon a certain corporation thereby created, and styled the Southern Minnesota Railroad Company, * * *without any consideration whatever, paid or to be paid by said company therefor*, all the rights, properties," &c., pertaining to the line of that defendant; and also complains in a similar manner, and for a similar reason, of the State's transfer to the other corporation defendant of the rights, properties, &c., pertaining to its line.

That the act had the effect to pass all the title to the companies, is not denied. The suit is based on the theory that it did pass such title. It is not claimed in the bill, that the State could not transfer the title by legislative grant. The sole complaint is, that it did this *without any consideration paid, or to be paid*, and, according to the bill, this is claimed to have been in disregard and violation of said trust, &c. It can hardly be claimed that if the act had granted the 240 sections for an adequate cash consideration, that would have been a violation of the trust.

The allegation that the grant was without consideration, is untrue. Each of the companies was to have the lands, only after the construction of road. The construction of roads was the consideration for the lands; neither company ever received an acre until it had earned it by constructing a road. It is claimed that this was not a sufficient consideration to be a good execution of the trust.

But plaintiff has already claimed that an unconditional grant of 120 sections, by the Territory, to the old company, upon no consideration, but the bare expectation

that the company would construct road, was a good execution as to those 120 sections of the trust reposed in the Territory by the act of Congress.

The good faith of the State, in making the grants is not impeached. That the legislature believed it was making, not only the best, but the only use that could be made of the lands, is not questioned by the bill. That the State could have made any sale, for a cash consideration, is not alleged nor proved. That it was the best way to secure the ultimate payment of plaintiff's bonds, by construction of roads, developing and increasing the resources of the State, was the opinion, not of the legislature only, but of the plaintiff himself.

It was his opinion, that "the State was wholly unable to finish the roads it had acquired, and the policy of the State granting the lands and franchises to companies to complete the roads before the grant should expire, was wise, and *necessary to enable the State to pay her railroad bonds*; that it would so increase her population and wealth, that she would be able to pay them—and he expected it would be done."

(*Dep. of Drake, p.* 105, *Record.*)

Was it a disregard and violation of the trust, and of plaintiff's rights and equities, to make the disposition of the lands which was *necessary to enable the State to pay her railroad bonds?*"

VII.

AS TO THE RELATION OF THE STATE TO THE HOLDER OF THE STATE BONDS.

The plaintiff's claim is simply as a bondholder of the State, having no advantage over any other bondholder; having received payment in full for the grading done by him for the old company. (*Plaintiff's testimony, printed Record, page* 96.)

WE CLAIM THAT, AS BETWEEN THE STATE AND THE HOLDER

OF THE STATE BONDS, THE STATE IS THE PRINCIPAL DEBTOR AND PRIMARILY LIABLE.

If this position is correct, the doctrine of subrogation invoked by the plaintiff has no application, and the theory of his case rests upon an unwarranted assumption, because he claims that the original railroad company is his principal debtor, primarily liable to him, and that the State is simply a surety for the debt, thus owing to him by his principal debtor, the company; citing in support of his claim, certain cases where a court of equity has allowed the creditor of the *principal debtor* to have the benefit of securities placed by the latter in the hands of his *surety* for his protection.

See appellant's brief and authorities cited, pages 95, 96.

The endorsement of the president of the company (*printed Record, folio* 385,) upon the State bond, is appealed to by the plaintiff as establishing this relation of debtor and creditor between him and the company. This endorsement is made, however, to carry out a provision in the constitutional amendment, requiring these State bonds to be made "payable to the order of the company to whom issued, *transferable by the endorsement of the president of said company.*"

It was not intended thereby that this endorsement should create any obligation on the part of the company; the securities to be furnished by the company, and the obligation of the latter in the transaction, was specially described and defined in the constitutional amendment. This endorsement was obviously intended merely as a regulation of the transfer of the bonds.

The president of the company (not the company) was required to endorse the bond, for the purpose of transfer only; and in so doing, he derived his authority from this provision of the constitution, and not from the company.

His signature, under such circumstances, could not create a liability in the company, not called for by the constitutional amendment.

The endorsement in question does not purport to be the

act of the company, but purports to be the act of the president only.

Printed Record, folio 385. *Agreed statement of facts, ibid, folios* 408-409.

The plaintiff endeavored to prove, by parole, a special authority on the part of the company for the endorsement of these bonds. See the testimony of the plaintiff, which was the only testimony offered on this point. (*Printed Record, folios* 293, 294, 295). This proof, if competent, falls short of proving any authority from the company to the president, to make any other endorsement than that required by the constitution; no ground, however, was laid for the introduction of parole proof of the contents of the records of the company, and the proper objections to such proof were interposed by the defendants.

(*Printed Record, page* 294.)

Suppose, however, that this endorsement by the President created an obligation from the company to the holder of the State bonds. It is clear that such an obligation, not being called for by the constitutional amendment, was an independent contract of the company, having no legal connection with the constitutional provisions whatever. It is equally clear that the liability of the State to the bondholder, under the constitutional amendment, was not that of surety *upon this contract of endorsement*, entered into by the company independently of, and not under, the constitutional amendment.

This endorsement, as an independent contract of the company, must, therefore, be construed, according to its terms, as a collateral obligation to that of the State, but even if it is claimed to be a primary obligation of the company, the State is in no manner privy to it, and, therefore, cannot be held to be a surety for the debt of the company thereby created.

The securities provided by the constitutional amendment have already been adverted to.

The *first*, or pledge of the net profits, of course was

never available to the State, because the company never completed any road.

The *second*, intended to be a conveyance of two hundred and forty sections of land in trust, is expressly declared to be provided "for the better security of the Treasury of the State from loss on said bonds."

The *third*, or first mortgage bonds of the company, corresponding in amount to the State bonds issued to it, is declared to be "as further security."

Under the provisions of the constitutional amendment, the company contracted with the State to make provision for the State bonds, so as to exonerate the State Treasury; to secure the performance of *this contract of indemnity*, the company transferred the securities to the State.

The counsel for the plaintiff inaccurately assumes that these securities were transferred to the State, to provide a fund *for the payment* of the State bonds.

The fund to be provided for the payment of the bonds *was to be* furnished to the State by the company. The securities in question *were not this fund*, but remained in the hands of the State as security *against any default* of the company in performing its contract, and not as security or a fund for the benefit of the bondholders.

The case is readily distinguished from the cases cited in the plaintiff's brief, (*page* 96.)

In the present instance, the security was taken to secure an obligation or indebtedness of the party furnishing the security, *to the party receiving it.*

In the cases cited by the counsel for plaintiff, the security was taken to secure the surety for a debt owing to a *third* party by the principal debtor, or for the protection of a debt, owing by the principal debtor, to a *third party.*

See Moses vs. Murgatroyd, 1 *Johns. Ch.*, 119–130. *Phillips vs. Thompson*, 2 *Johns. Ch.*, 418, *cited by plaintiff's counsel.*

In some instances a trust was expressly created or intended *in favor of such third party.*

Neilson vs. Blight, 1 *Johnson's cases, page* 205.

There was certainly no intention, on the part of the State, to create a trust in favor of the holders of her own bonds, to whom she was *directly* liable, and which would, according to the theory of the plaintiff, create an incumbrance upon these great enterprises, of which she had charge, which could only be removed by paying the State bonds, both principal and interest, *in advance*, contrary to the terms of the constitutional amendment.

The plaintiff's counsel lay some stress upon the phraseology of the *proviso* attached, by the constitutional amendment, to the conveyance of the 240 sections of land in trust therein required.

This proviso refers to sales of this land to be made or contracted for by the company, in its discretion, and the effect of this proviso, is to require that the funds or proceeds of sale shall remain in the hands of the State, in place of the original security or land.

It is to be applied only in case the company makes default, and is to remain in the hands of the State, in the meantime, as security for that purpose.

It provides, "that all the proceeds of all such sales shall be applied to the payment of interest accruing upon the lands, *in case of default of the payment of the same*," *&c.*

The State, without the *concurrence* or voluntary act of the company, could make no such sale, and, it was only in the *continyency of such* a sale that the proviso was applicable ; *no such fund was in fact ever raised.*

The State bonds are in *terms* absolute obligations of the State.

This absolute engagement of the State is not a *matter of form* merely, but the State thereby assures the holder that she is *unconditionally* his debtor.

If the obligation of the State is that of a mere surety, her liability, as such, would be *strictissimi juris*, and she might therefore claim that she was discharged from all liability, because the condition (the last proviso in the constitutional amendment) upon which she became such surety,

them to a stranger, or redelivers them to the debtor, before the creditor makes a claim of subrogation it is difficult to see how the creditor, thereafter, can pursue the securities, especially in the hands of a purchaser.

This doctrine of subrogation in a creditor against his surety, under certain circumstances, appears first distinctly in the case of *Maure vs. Harrison*, 1 *Equi. Ca. Abr.*, 93, (*cited in Homer vs. Savings Bank*, 7 *Conn.*, 483), in which it was adjudged that a bond creditor, "shall *in chancery*, have the benefit of all the counter bonds or collateral securities, given by the principal to the surety," "as if A owes B money, and he and C are bound for it, and A gives C a mortgage or bond to indemnify him, B shall have the benefit of it to recover his debt."

The case of *Moses vs. Murgatroyd*, 1 *Johns, Ch., pp.* 121 *and* 122, is much relied on by the plaintiff's counsel. The plaintiff in the case cited, held certain notes endorsed by Murgatroyd, the maker of which had assigned to him certain property, as special security against his endorsements; the maker of the notes became *insolvent*, the notes were dishonored, and notice of non-payment given to Murgatroyd, the endorser, *who assured the plaintiff or holders of the notes, that they should be paid out of the assigned property, and relying on the assurance, they forbore to sue on the notes.*

Chancellor Kent, *in that case*, says that these securities are in fact trusts, created for the better protection of the debt, and it is the duty of the court to see *that they fulfill the design.*

He says that "when it (the trust) came to their knowledge, they were entitled *to affirm the trust*, and enforce its performance."

He cites *Neilson vs. Blight*, 1 *Johnson's Cases*, 205.

In the case cited, it was needful that the plaintiff should *claim* his right or *affirm* the trust.

This he did; and relying on the security, he forbore his recourse on the personal obligation. It, after notice of the trust, he had made no claim, the trust (with the concur-

rence of the assignee,) would have been *revocable*, and the property might have been disposed of free from any claim of the creditor.

The trustee, so called, under such circumstances, if he had the legal title of the property, or if he had power from the assignor to convey, could undoubtedly have transferred the title to a purchaser, or he could have redelivered the property to the assignor clear of any claim by the creditor.

Considering the securities in question in this case as a trust, in the hands of the State, to the extent claimed by the plaintiff, has the plaintiff ever, or at least prior to the grant of the State to the defendant companies, or prior to the interest acquired by the defendants, *claimed* these securities or *affirmed* this trust?

The testimony of the witnesses generally, including that of the plaintiff himself, shows that the plaintiff never claimed a lien upon the securities transferred to the State, or upon the roads and property of the old companies, or any interest in them, prior to this suit.

(*See testimony of plaintiff, printed Record, pages* 96, 97, 98. *Testimony of Horace Thompson, first President of the St. Paul and Sioux City Railroad Company, pages* 99, 100; *fol.* 96, 97, 98. *Testimony of E. F. Drake, President of the same company, page* 103, *fol.* 315. *Testimony of John L. Merriam, Vice President of the same company, page* 118, *fol.* 360 *and* 361. *Clark W. Thompson, President of the Southern Minnesota Railroad Company, page* 113, *folio* 345.)

The above was negative testimony upon this point; after the testimony of these witnesses had been given, the plaintiff was recalled.

His evidence, on recall, is referred to on pages 36 and 37 of plaintiff's printed abstract and brief. He states that at the session of the legislature of the State in 1861, *after the foreclosure*, he and his friends advocated a scheme for the *building* of one line of road, from La Crescent, &c., (embracing the line of road in question.) We give his

exact words, "as fast as ten miles of the road was constructed, $100,000 of the old bonds should be given up to the State, and the like *amount of new bonds* issued, provision being made for the payment of the interest of the new bonds. That was the only proposition which I *favored, or had anything to do with.*

That proposition was defeated, by what was regarded as a decisive vote, in the legislature of 1862. It was also defeated in the legislature of 1861. (*Printed Record, fol.* 379, *page* 124.)

The plaintiff also, (without any proper foundation, and against the objection of the defendants,) undertook to prove, by parole, by his own testimony, the contents of a written memorial or communication. These are his words:

"It was a memorial or petition asking the legislature to retain the franchises, lands and graded road-beds of the Minnesota and Pacific and the Southern Minnesota Railroad Company, until *provision had been made* for the payment of the State bonds issued on account of these roads." (*Fol.* 378, 379.)

William L. Banning, a member of this legislature, testified that he advocated the proposition for building the road favored by plaintiff. He had had an interview with the plaintiff previously on the subject, in which this scheme was talked over; the old bonds held by plaintiff were to be discounted, "and the lands and franchises were to be *regranted*, with the condition that the bonds should be returned and *reissued* by the State as the roads were constructed. *I know this was my plan, and I understood Mr. Chamberlain as assenting to it.*" *Fol.* 342, *page* 112.

He says further: "Now the plan in my mind, and proposition that I wanted considered was, that these land grants should be turned *over to new companies, the old bonds* issued by the State as the roads were constructed, and the old bonds to be surrendered and be scaled or valued at a certain percentage, that percentage to be fixed or ascertained by a commission." (*Folio* 344, *pages* 112–113.)

"I don't remember of his making any claim of any lien upon the lands or franchises of these roads until recently." (*Folio* 337, *page* 110.)

There is nothing in this which shows that the plaintiff ever made a claim upon the State to have these securities, or the property and franchises of the old companies, applied or subjected to the payment of his bonds; or that he ever claimed a lien upon such securities or property, or attempted *to affirm* this alleged trust.

The State had declined to pay these bonds on account of the failure of the companies to proceed with the enterprises, in accordance with the condition inserted in the last proviso in the constitutional amendment. The efforts which the plaintiff and his friends were making then, and which they have made afterwards, were to induce the State to *recognize her liability*, as obligor, upon these bonds. The plaintiff was seeking to enforce the *personal* liability of the State. He made no other claim, and never has made any other claim, except in bringing the present suit. It was supposed that if the roads were built, although by new parties, the State would then be without excuse, and would then recognize her liability upon her bonds, and this is what the plaintiff and his friends meant in favoring a scheme which would couple the building of the roads with the payment of the bonds.

See Banning's testimony, folios 336, 337, *pages* 110, 111.)

"I remember distinctly Mr. Chamberlain saying, that the State was wholly unable to finish the roads which it had acquired, and the policy of the State granting the lands and franchises to companies to complete the roads, before the grant should expire, was wise and necessary, to enable the State to pay her railroad bonds, that it would so increase her population and wealth, that she would be able to pay them, and he expected it would be done." (*Testimony of Drake, printed Record, page* 105.)

The plaintiff nowhere asserts, either in his bill or testimony, that he ever made any claim upon the State, or the defendants, of any interest in, or lien upon the securities

or property in question, or to have them subjected to the payment of her bonds, otherwise than by this suit.

The statement in the printed abstract and brief of plaintiff, pages 36 and 37, in relation to the position taken by the plaintiff or his friends before the legislature in 1861, is erroneous, and unsupported by a particle of proof.

There was certainly no such proposition as is referred to in plaintiff's bill ever presented or advocated in the legislature, or such claim made to the State by any person or party in the legislature, or by the plaintiff; that is to say, there was no proposition embodying the theory of the plaintiff's bill, that these properties were a trust fund, &c.

The testimony of Ed. Rice is very clear, that the plaintiff never made such a claim. Mr. Rice has always been a prominent railroad man, and was the first president of the Minnesota and Pacific railroad company. (*Printed Record, folio* 354 *and* 355, *page* 116.)

General Sibley, who was the first governor of the State, and a member of the State legislature in 1871, and chairman of the special railroad committee which had in charge the question of settling equitably the old railroads bonds, testifies that he had an interview with the plaintiff in 1871, during the session of the legislature. He says that he (Gen. Sibley) adverted to the fact, that he had heard rumors that the holders of these bonds claimed a lien on the lands granted to the companies who had built the roads, in a speech he made in the House that session. That he mentioned to the plaintiff that winter, his surprise that the New York bondholders made any such claim. That the plaintiff concurred with his expression of surprise. "I never heard him express any other opinion than that the State was the party liable on the bonds." (*Folios* 369 *and* 370, *page* 121.)

The plaintiff, therefore, never having made any claim to be subrogated to the alleged security, or never having affirmed the alleged trust, the State was unrestrained in granting the properties in question to the defendant companies.

By the foreclosure and forfeiture, the State succeeded to the title, franchises and equity of redemption of the original company, so that the act of the State, in making the grant to the defendant companies, is equivalent to the concurrent act of the State and the old company. There was, therefore, in no view of the matter, anything in the way of the State conveying a clear title to her grantees.

If the plaintiff had made his claim of subrogation before the grant to the defendant companies, and the State had admitted his claim, it would have been utterly impracticable to have invested capital in the enterprise, or induced any one to accept a grant loaded down with such an incumbrance.

The State would either have been obliged to pay all of its bonds in advance, contrary to the terms of her obligation, and which she was unable financially to do, or to abandon these great public works. The latter course would, from necessity, undoubtedly have been pursued, and while the public interests would have suffered, the plaintiff would not have been the gainer. His so called security would have been a mere wreck, and utterly valueless.

It was not the interest of the plaintiff to bring about such a result; it was his interest that the roads should be built, so that the objection made at the time to the payment of the bonds heretofore noticed might be removed, the ability of the State to meet her obligations increased, through the completion of these important lines of internal improvements; therefore, he never claimed his alleged right of subrogation, but waiving it knowingly, and because it was evidently most to his interest to do so, he resorted to his claim on the personal liability of the State. The further consideration of the plaintiff's conduct will be considered in the tenth point of our brief.

It was not intended by the constitutional amendment, that the holders of the State bonds should have any interest in or claim on these securities and properties in question.

The plaintiff cannot claim that the contract between the

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The plaintiff cannot claim that the contract between the

much as the defendant companies showed a good title in themselves to the right of way and land over which the road was built, the plaintiff, under no circumstances, shows any interest in, or claim on the road beds.

IX.

THE DEFENDANT COMPANIES ARE PURCHASERS IN GOOD FAITH WITHOUT NOTICE. THE TRUSTEES, DEFENDANTS, AND THE BONDHOLDERS, &C., REPRESENTED BY THEM, ALSO ACQUIRED THEIR TITLE IN GOOD FAITH AND WITHOUT NOTICE.

The defendants standing in the above position, are favored in equity, and a court of equity will not aid the plaintiff against them under such circumstances.

As far as the holders of bonds, &c., are concerned, it is admitted in the agreed statement of facts, that they were sold by the defendant companies to purchasers, for full value, and without notice, "other than the law would imply from the existence of the laws, records, conveyances, proceedings, proved or admitted in the suit, of any claim on the part of the plaintiff to any part of the property described in said mortgages." (*Printed Record, page* 139).

It is admitted also, that the defendant companies proceeded with the work. That the Southern Minnesota Railroad Company constructed and equipped 167 miles of its line of road, and expended upon it $5,000,000. That the St. Paul & Sioux City Railroad Company constructed and equipped 170 miles of its line of road, and expended upon it $3,000,000.

The proofs show that the act of March 4, 1864, was accepted by the defendant companies, and that the work was carried on and this expenditure made by them in good faith, and without actual notice of the plaintiff's claim. The mortgages were also executed and accepted by the trustees in good faith, and also without such notice.

This is abundantly proved by the prominent officers connected with these roads from their organization. *See testimony of E. F. Drake, President of the St. Paul & Sioux City Railroad Company; Horace Thompson, its former President;*

John L. Merriam, its Vice President; Clark W. Thompson, President of the Southern Minnesota Railroad Company; Printed Record, pages 98, 99, *fol.* 300, 301; *page* 103, *fol.* 314, 315; *page* 113, *fol.* 345, 346; *page* 118, *fol.* 361. The plaintiff was also examined, and does not claim that he ever gave any notice of his claim to these parties, and his testimony goes to show he did not.

He testifies he had an interview with Samuel B. Ruggles, one of the trustee defendants, in 1864, 1865 or 1866. This was before the large mortgages for construction and equipment were executed, and after the small mortgage of 1864 was executed by the present Southern Minnesota Railroad Company. In this interview with Mr. Ruggles, although the conversation turned upon the railroad, the plaintiff admits he made no claim to Mr. Ruggles.

The plaintiff made no such claim, prior to this suit, upon the securities and property in question, or until long after the defendants acquired their titles and interest. *The defendants could not have had any notice of a claim the plaintiff did not make.*

The plaintiff, in answer to this position, claims that the defendants were constructively notified, through notice of public acts and records connected with the history of these land grant roads, upon which the plaintiff's claim rests.

This position is unsound; these records and facts to which the plaintiff refers, do not show that the *plaintiff made any claim to these securities or properties.*

It is not enough to show that the plaintiff was in a position to make a claim, if he elected so to do. He should show that he actually made a claim. See this point referred to in our eighth point. Whether the plaintiff had any equitable interest in these properties, did not depend on these records and public acts alone, but also upon what action the plaintiff took himself. It is not admitted, however, that public acts of this nature are *per se* constructive notice of *private rights.*

There are facts which are indispensable to the plaintiff's theory, of which the defendants had no notice whatever. Thus the alleged fact of an endorsement by the original company, upon which the plaintiff relies to show that this com-

pany *was the debtor* of the plaintiff, and that the State was his surety, &c.

All the defendants deny, in their answers, the fact of this alleged endorsement, and no notice or knowledge of the fact to or in the defendants was proved.

The defence of a purchaser in good faith, without notice, is set up in all the answers as fully and definitely as the circumstances required, and with sufficient clearness to admit proof on this point, which was read on the hearing, without any objection that this defence was not properly pleaded, or any motion to suppress on that ground.

(*Answer of defendant companies, printed Record, fol.* 119, *page* 40; *fol.* 141, 142, 143, *page* 47. *Answer of trustees, ibid, fol.* 281, 282, *pages* 92, 93.)

The plaintiff, in his brief (*page* 125), is mistaken in stating that the defendant corporations admit that they knew at the date of the act of March 4, 1864, of the transfer of these State bonds, or the nature of such transfer.

In the absence of any claim by the plaintiff, and any notice whatever, actual or constructive, of such claim, and with the assurance of the State in her grant or act of March 4, 1864, that these properties were free from all liens and claims, it can hardly be seriously contended that the defendants had notice of the plaintiff's claim.

All the defendants have given value for their interests; the defendant companies put in millions of dollars in the roads, which became highways, and to a certain extent, public property. It is admitted that the bondholders, &c., have given full value for their interests.

The good faith of these defendants is unquestioned.

The defence of a *bona fide* purchaser in such a case is impregnable, and a court of equity will not only protect such defendants, but will not interfere against them, upon well settled principles of equity.

Bassett vs. Notworthy and notes, in 2nd Leading Cases in Equity, Hare & Wallace's Notes (3d American edition, 1859), page 52, and authorities cited.

"Equity will not disarm a purchaser, but assist him, and that precedents of this nature are very numerous, where the court had refused to give any assistance against a purchaser,

either to an heir or to a widow, or to the fatherless, or to creditors, or even to one purchaser against another."

Lord Nottingham in Bassett vs. Notworthy, Ib., page 54.

This doctrine applies with peculiar force to the holders of bonds, &c., and their mortgage security.

Cowdry vs. Galveston Railroad Company, 11 *Wallace,* 459.

X.

THE PLAINTIFF IS ESTOPPED, BY HIS CONDUCT, FROM MAKING HIS CLAIM, AND IS NOT ENTITLED TO RELIEF BY REASON OF HIS LACHES.

Horace Thompson, who was the first president of the St. Paul & Sioux City Railroad Company, testified that he had repeated conversations with the plaintiff in relation to the construction of this road. He says: "The first conversation which I recollect about, was in 1864, when I was president of the company, and *before we commenced the work.*" * * * *It was before any money was paid in on the stock.* * * * * * * * * * *

"He encouraged us to go on, and stated as a reason, among other things, that when these land grant roads were completed, the State could no longer have any reasonable excuse for not paying his demands on these bonds, which he held, &c. On more than one occasion since, Mr. Chamberlain has expressed to me the same views during the progress of this road; *and in no case has he given to me an intimation that he held a claim or lien of any kind upon the lands,*" &c.

Printed Record, pages 99, 100, *fols.* 303, 304.

The witness proves that the plaintiff was fully posted at the time, as to the condition of things, and as to the parties who had undertaken the enterprise, and what they proposed to do. That he was also interested in a similar enterprise, that is, in the construction of the Minneapolis and Cedar Valley Railroad, one of the original land grant railroads organized under similar legislation, being president and principal manager of the latter road.

E. F. Drake, President of the St. Paul and Sioux City Railroad Company, testified to frequent conversations with

the plaintiff in 1862, when the witness was endeavoring to procure legislation to facilitate the construction of the Minnesota and Pacific Railroad, in which he was interested as contractor, the plaintiff being then largely a holder of the State bonds issued to that company. He repeatedly expressed his sympathy and encouragement. During the pendency of this legislation, Mr. Chamberlain proffered his sympathy, and offered to aid us what he could to secure it." After Mr. Drake became president of the St. Paul and Sioux City Railroad Company, (then known as the Minnesota Valley Railroad Company,) the latter had several conversations with the plaintiff about railroad matters, and the State bonds, as the work was progressing; at which he gave expressions of satisfaction that the work was going on. On no occasion did he ever make or intimate that he had any claim.

Ibid, page 105, *fol.* 320, 321, 322.

Edmund Rice, first President of the Minnesota and Pacific Railroad Company, one of the original land grant roads, organized under similar legislation, testified that the plaintiff entered upon negotiations with him in July, 1861, to build part of this road. The plaintiff then held a large amount of the State bonds issued to that Company. He conversed often about this matter, with Mr. Rice. He never claimed any lien or interest upon, or in the property or roads.

Printed Record, pages 115, 116; *folios* 351, 352, 353, 354.

John L. Merriam, Vice President of the St. Paul & Sioux City Railroad Company, testified to an interview with the plaintiff in the last of March, 1864, and that they talked over railroad matters, relative to the legislation of that winter, and the building of this road. "He said he hoped we would organize a company in Minnesota, and go on and build the road. Mr. Thompson, I recollect, asked him if he would join us in the enterprise. His reply was, that he would take it under consideration; that he had a good deal on his hands. I think he said he would give us all the aid he could." The plaintiff never made any claim to the properties in question.

Ibid., page 118, *folios* 359, 360.

Clark W. Thompson, President of the Southern Minnesota Railroad Company from its organization, testified to repeated interviews each year since 1858, with the plaintiff, in which

the witness "conversed with him about Minnesota railroad matters and Minnesota State railroad bonds." "He knew, I believe, of my connection with the Southern Minnesota Railroad Company, and that said company was going on and building the road." "I have had conversations with him about the payment of the Minnesota railroad bonds." He never made any claim to the properties in question.

Printed Record, 113, 114, *fol.* 346, 347.

Other testimony and evidence shows that soon after the foreclosure, efforts were made in the Legislature, from year to year, to re-grant the roads, franchises and property therewith acquired by the State under the foreclosures, &c., to new companies, upon conditions which would ensure the building of the roads.

With respect to the lines of road of the defendant companies, or original Southern Minnesota Railroad Company, an act of this character was passed in 1861, (*Printed Record, page* 219); another act was passed in 1862 (*ibid, page* 223); another act was passed in 1863 (*ibid, page* 228), also of like character.

This legislation as to the line of road of the defendant companies having proved abortive, the act of March 4, 1864, was passed; under which these companies were organized.

Ibid, 233.

Similar legislation was had in the years 1861, 1862, and 1863, in relation to the Minneapolis and Cedar Valley Railroad, one of the original land grant roads, afterwards called the Minnesota Central Railroad Company, and now known as the St. Paul and Milwaukee Railroad Company.

Printed Record, pages 197, 204, 212.

Under the last act, the organization of the new company took place. The plaintiff was president and manager of this company, and was largely interested in, and prominently connected with, this road, giving much of his personal attention to its construction. This road and the St. Paul and Sioux City Railroad, as they approached completion, had running arrangements together. (*Printed Record, page* 104).

There had been similar legislation in 1861 and 1862, as to the Minnesota and Pacific Railroad, one of the land grant roads, under which latter act Mr. Drake built the first ten miles of road, as stated in his testimony and that of Mr.

Rice. The plaintiff held a large amount of the State bonds, issued to this road as previously stated.

In 1870 and 1871, measures were taken in the legislature for the purpose of effecting an equitable adjustment of the claims of the bondholders of the State, involving necessarily propositions to amend the constitution, to be voted on by the people, in conformity to the requirements of the State constitution.

Printed Record, pages 246-248.

A glance at this legislation will show that throughout all this mass of legislation, the *State always assumed* the right *to grant the full title, clear of incumbrances, of the roads, properties, &c., to the new parties or companies, who were expected to build the roads;* and that the legislation and action of the State, looking to a settlement or compromise of these State bonds, *had reference to nothing but the personal liability, (so to speak,) of the State on her bonds,* which had been questioned by some, and denied by others. *In these compromise measures there never was any question raised as to the right of the State to make the grants to the new parties or companies.*

The plaintiff took an active part, personally, in the legislation of 1861 and 1862, and was largely interested in the legislation which followed. He also took an active part in the legislation of 1871, favoring openly and energetically that measure.

Printed Record, testimony of Banning, Johnson and Sibley, pages 108, 109, 110, 111, 112, 119, 120, 121, 122 and 123.

The plaintiff himself, in his testimony, explains that his constant efforts were to have the State recognize its liability, and *provide* for the payment of the interest on his bonds. He says: "The interest I had in the Minnesota State railroad bonds brought me, during the sessions of several legislatures, in 1867 particularly, to get legislation to pay them."

The plaintiff's attitude before the public, before the legislature and State authorities, and before the railroad men who had set on foot again these enterprises, under the legislation which supervened upon the foreclosures, and were commencing work, and about to make large expenditures and invest immense sums of money in them, was from the commencement of the year 1861, continuously to the commence-

ment of this suit, an attitude of recognition of the right of the State to re-grant these roads, franchises and properties, clear of incumbrances, and an attitude of disclaimer of any interest in or claim in them. His position was always clearly understood to be, and was so intended to be understood by him, as having *only a personal claim upon the State*, which he was seeking to have recognized and provided for, not out of the assets of the new roads, but by taxation, as in the case of other bonded debt of the State; and as being desirous that these enterprises should go forward, and new parties should take hold of them under this legislation, because the building of the roads would remove the objection of the people to paying these bonds, and increase the ability of the State to pay them. He took great interest in the success of these new enterprises; for this reason encouraging the new parties frequently to take hold of, and proceed with them, expressing his earnest desire, on repeated occasions, for the success of this scheme of the State, he, himself, taking a conspicuous part in setting on foot and carrying on to successful completion, one of these important lines of road.

The equity which it is now claimed exists in his favor, was, from its nature, *secret and uncertain*. It had no place in the offices established by law for the registration of titles; it was without any legal title. It could not be known or recognized *practically*, unless he *claimed* it. Under such circumstances, *it was the duty of the plaintiff to make a claim to this alleged equity*, if he intended to insist upon it.

He was aware that the parties who were undertaking these new enterprises, understood and supposed that these grants were free from incumbrance, and he stood by, concealing his alleged equity, and allowed them to be deceived. Such a case clearly makes out an "*estoppel by conduct.*" Express declarations or representations are unnecessary to create an estoppel. Concealment; silence, when it is a duty to speak out; non-claim, when it is a duty to make a claim; culpable negligence or gross *laches;* will lay a sufficient ground for an estoppel.

In *Griggs vs. Wells*, 10 *Ad. & E., page* 90, a party was estopped by passive conduct. In *Niven vs. Belknap*, 2 *Johns.*, 573, by silence. *Hill vs. Epley*, 31 *Penna. St.*, 331-334;

In *Gregg vs. Von Phul*, 1 *Wall.*, 274, by culpable negligence. *Slim vs. Croucher*, 1 *De G. F. & I.*, 518, cited in *Bigelow on Estoppel, page* 544; *Young vs. Grote*, 4 *Bing.*, 253; "Where a person having a conveyance of land, keeps it secret for several years, and knowingly suffers third persons afterwards to purchase parts of the same premises from the grantor, who remained in possession, and who was the reputed owner, and to expend money on the land, *without giving any notice of his claim, he would not be permitted afterwards to assert his legal title against such innocent and bona fide purchasers.*"

Executors and heirs of Wendell vs. Killean, Van Rensselaer, 1 *Johns. Ch.*, 344.

See also Hobbs vs. Norton, 1 *Verni.*, 136.

Storrs vs. Barker, 6 *Johns. Ch.*, 166, 172, 173.

Broome vs. Beers, 6 *Conn.*, 198.

Smiley vs. Unglis, 2 *Ohio* (*Hammond*), 509.

Farell vs. Roberts, 50 *New York*, 222.

1 *Story's Equity Juris., sec.* 385.

2 *Sugden on Vendors*, (*Ed.* 1873) *page* (*at foot*) 743, *note* 2.

Leading Cases in Equity (*Hare & Wallace*), *page* 20, *&c.*

Swain vs. Seamens, 9 *Wallace*, 254.

Bigelow on Estoppel, page 436, 573, *&c.*, 510, 511, 540.

The plaintiff is not entitled to any relief, by reason of his laches.

The State and her grantees have never recognized the alleged lien or trust which the plaintiff claims; and the plaintiff, up to the time of the suit, has apparently acquiesced in the claim, which the State and her grantees have always and continuously made, since the foreclosure, as the owner, in her and their own right, of these properties, &c. This period of acquiescence of the plaintiff is about fifteen years.

Such *laches*, especially where rights of third parties have intervened, should debar the plaintiff from relief in equity. "*Vigilantibus non dormientibus, æquitas subvenit.*"

2*d Story's Equity Jurisprudence, Sec.* 1284 *a, and authorities cited in note.*

Although a suit could not have been brought against the State, the plaintiff might have made his claim to the State, to have these securities or property subjected to the payment of his debt.

There was nothing to prevent the plaintiff from bringing suit against the defendant in 1864, ten years ago.

The analogies furnished by the statute of limitations of the State of Minnesota, are all against the plaintiff's claim in this respect.

The statute of limitations of the State of Minnesota provides, in chapter 66 of the General Statutes of Minnesota (Revision of 1866), that "actions can only be commenced within the periods prescribed in this chapter, after the cause of action accrues, except where, in special cases, a different limitation is prescribed by statute."

Sec. 3, *title* 2, *page* 450.

Section 6 of said chapter provides a *six* years' limitation for "an action upon a contract or other obligation, express or *implied.*"

First subdivision of section 6, *page* 451.

The term action, in the statute, embraces suits both at law and in equity, the distinction between actions at law and in equity being abolished in Minnesota.

Section 1, *ibid. page* 450.

So an action "for taking, detaining and injuring personal property," or conversion, and actions "for relief on the ground of fraud:" in the latter case, the statute runs from the time of the discovery of the fraud.

Fourth and sixth subdivisions, section 6, *page* 451.

This is not an action to establish, in the plaintiff, a title in the land, but a suit to subject this property to the claim of the plaintiff, as a creditor of the original railroad company. And the plaintiff's cause of action, if any, would fall within the limitation above mentioned, and would be barred, if the suit was brought in the Courts of this State.

Cock vs. Van Etten, 12 *Minn., page* 525.

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